2254.

SUPREME COURT OF THE UNITED STATES.

No. 202.

L. E. STAINBACK AND AL., CLAIMANTS OF THE SHIP WASHINGTON, HER TACKLE, &c., APPELLANTS,

vs.

WILLIAM A. RAE, IN HIS OWN RIGHT AND AS ADMINISTRATOR OF JOSEPH PORTER WHEELER, DECEASED, AND EDMUND CROSBY, MASTER, OWNERS OF THE SHIP MARY FRANCES, AND FREDERICK TUDOR, OWNER OF THE CARGO OF SAID SHIP, LIBELLANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF MASSACHUSETTS.

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December 10th, 1851.

This action may be entered at Washington.

THOMAS B. POPE,
For self and Charles G. Loring, proctors for libellants.
SOHIER & LOWELL,
Respondents' proctors.

UNITED STATES OF AMERICA,
Massachusetts district.

At a circuit court of the United States, begun and holden at Boston for the first circuit and district of Massachusetts, on Tuesday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and fifty-one, before the hon. Levi Woodbury, associate justice, [and] hon. Peleg Sprague, district judge.

JOSEPH P. WHEELER et al., libellants,
vs.
THE SHIP WASHINGTON et al.

The transcript of the record of the district court in this cause was filed in the clerk's office on the nineteenth day of June, A. D. 1850, and is as follows, viz.:

UNITED STATES OF AMERICA,
Massachusetts district, ss.

At a special district court of the United States, holden by adjournment at Boston, within and for the district of Massachusetts, on Monday, the tenth day of June, A. D. 1850, before the honorable Peleg Sprague, judge.

JOSEPH P. WHEELER et als., libellants,
vs.
THE SHIP WASHINGTON et al.

This libel was filed in the clerk's office on the twenty-first day of December, A. D. 1847, and is as follows, viz.:

To the honorable Peleg Sprague, judge of the district court of the United States, within and for the district of Massachusetts.

The libel and complaint of Joseph Porter Wheeler and William A. Rea, of Boston, in the district aforesaid, merchants, and Edmund Crosby, of said Boston, master mariner, owners of the ship Mary Francis, whereof said Crosby lately was master, and of her freight, and Frederick Tudor, of Boston, merchant, owner of the cargo on board said ship Mary Francis, on her late attempted voyage from said Boston

to New Orleans, against the ship Washington, whereof Benson is now master, her tackle, apparel, and furniture, and her freight, and the cargo on board said ship Washington, belonging to the owners of said ship, and against all persons lawfully intervening for their interest therein, in a cause of collision civil and maritime.

And thereupon the said Joseph Porter Wheeler, William A. Rea, and Edmund Crosby, and the said Frederick Tudor, allege and articulately propound as follows:

First. That on the sixth day of December of this year, eighteen hundred and forty-seven, the said ship Mary Francis, whereof Edmund Crosby then was master, was at the port of Boston aforesaid destined on a voyage from thence to the port of New Orleans, in the State of Louisiana, with a lading of ice, to the amount of three thousand one hundred and forty-three dollars in value, or thereabouts, and was at that time a tight, staunch, and well built vessel, of the burthen of three hundred and twenty-six tons, or thereabouts, and was then completely rigged and sufficiently provided with tackle, apparel, and furniture, and then had on board and in her service twelve mariners or thereabouts, which was a full complement of hands to navigate the said ship on the voyage above mentioned.

Second. That, on the seventh day of said December, 1847, the said ship, provided and manned as aforesaid, sailed from the said port of Boston on her aforesaid voyage, and, in the prosecution of her said voyage, had proceeded safely until on or about the eleventh day of said December, 1847; and that, on said eleventh day of said December, 1847, and about three of the clock of the morning of that day, within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this honorable court, George White, the second mate of the said ship Mary Francis, who then had the watch, and was the commanding officer on deck, and that part of the crew which composed the said watch, observed the said ship Washington, whereof Benson was then master, of the burden of five hundred tons, or thereabouts, with her sails set, sailing on her voyage towards the said ship Mary Francis; the said ship Mary Francis then having her starboard tacks on board, and the said ship Washington having her larboard tacks on board; that, thereupon, the said George White and others, of the crew aforesaid, several times, with loud and audible voices, hailed the said ship Washington, and called to her crew, (and kept the Mary Francis close hauled to the wind, so that the sails of the said ship Mary Francis shivered,) and desired the crew of the said ship Washington to keep clear of the said ship Mary Francis, and which they had time and tide enough to do, and might, with great ease and safety, have done, but which they refused, or at least neglected to do; and that, notwithstanding the said ship Mary Francis was then upon her starboard tack, and was bound to, and did, persevere upon said tack, and it was the duty of said ship Washington to bear away, and there was sufficient time and room for the said ship Washington to pass, the crew thereof kept on their course, and ran their ship, head on, with very great force and violence, foul

of and on board the said ship Mary Francis, nearly amidships, on her larboard side, and broke down the rail bulwarks and stanchions, stove the plankshear, and broke her planks in the wales and bends below the white streak, and started her timbers on the other side, and carried away the fore and main rigging and all the *the* fore and aft stays, and otherwise damaging said ship, and rendering her totally unseaworthy and a wreck.

Third. That, at the time the damage mentioned in the next preceding article happened, the said ship Mary Francis was in the pursuit of her proper course, and her crew could not have changed her course without a violation of their proper duty; and that the said ship Washington could have steered clear of, and passed by, said ship Mary Francis without any damage whatever; and that if the said Benson and the rest of the crew of the said ship Washington had not refused, or at least neglected, to endeavor or to keep clear of the said ship Mary Francis, as desired by the said George White and others, as mentioned in the next preceding article, which it was their duty to do, and which they might, with ease and safety, have done, the aforesaid damage would not have happened.

Fourth. That the ship Mary Francis, before and at the time of receiving the damages above mentioned from the said ship Washington, and as herein before mentioned, was a tight, strong, and staunch vessel; and that the libellants, said Wheeler, Rea, and Crosby, then were, and now are, the true and lawful owners of the same, and of her tackle, apparel, and furniture, and of her freight; and that said Tudor then was, and now is, the owner of her said cargo.

Fifth. That, immediately after the damages mentioned in the second article of this libel happened, the said ship Mary Francis sprung a-leak, to such an extent that her crew were unable to free her of water; and that, some time in the forenoon of the said eleventh day of December, 1847, the master and crew of the said ship Mary Francis, finding they could not bring said ship and her cargo into port, and that said ship was in a sinking condition, went on board said ship Washington, and left and abandoned said ship Mary Francis upon the high seas; and that the said ship Mary Francis was of the value of eighteen thousand dollars or thereabouts, and her cargo of the value of three thousand one hundred and fifty-three dollars or thereabouts; and that, by reason of the said ship Mary Francis and her cargo having been run foul of or run down as aforesaid, the libellants have sustained damages as aforesaid to the extent of the said value of said Mary Francis, and of the said value of said freight, and of the said value of said cargo, in all to the amount of twenty-one thousand six hundred and forty-three dollars.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court; in verification whereof, if denied, the libellants crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore the libellants pray that process, in due form of law, according to the course of admiralty and of this honorable court, in causes

of admiralty and maritime jurisdiction, may issue against the said ship Washington, her tackle, apparel, and furniture, and her freight, and the cargo on board said ship, belonging to the owners of said ship; and that all persons having, or pretending to have, any right, title, or interest therein, and particularly George R. Sampson and Lewis W. Tappan, of the firm of Sampson and Tappan, consignees, may be cited to appear and answer all and singular the matters so articulately propounded; and that this honorable court would be pleased to pronounce for the damages aforesaid, and to decree such other relief to the libellants as shall to law and justice appertain, and also to condemn the said ship Washington, her tackle, apparel, and furniture, and her freight and her cargo, belonging to the owners of said ship, and all persons intervening for their interest therein, in costs.

JOS. P. WHEELER,
WM. A. REA.
EDMUND CROSBY,
FREDERIC TUDOR.

CHARLES G. LORING,
S. BARTLETT, and
THOMAS B. POPE, *Proctors.*
December 21st, 1847.

Sworn to by said Wheeler before me.

S. E. SPRAGUE, *Clerk.*

Whereupon, by order of the judge, a warrant issued, commanding the marshal to give notice to all persons concerned, that said libel had been filed, and that trial would be had thereon at a special district court, to be holden at the court-house in Boston, in said district of Massachusetts, on the seventh day of January, 1848, at ten o'clock a. m. To give said notice by advertising the same in one of the public newspapers printed at Boston, and by posting a copy of the same notice at the court-house, in Boston, fourteen days at least before said day of trial, and to take the said ship and appurtenances into his custody, and to attach the freight of the said ship in the hands of George R. Sampson and Lewis W. Tappan, of the firm of Sampson and Tappan, consignees, and summon said Sampson and Tappan to appear and answer to said libel.

On which the marshal made return, as follows, viz.:

UNITED STATES OF AMERICA,
Massachusetts district, ss.

BOSTON, *December* 21, 1847.

Pursuant hereunto, I have given notice to all persons concerned that the libel herein named has been filed, and that trial would be had thereon as within commanded, by publishing the substance of the within warrant and monition in the Boston Post, a newspaper printed in Boston, in said district, and by posting a copy of the same notice in the

court-house in said Boston, fourteen days at least before the day within named for trial.

On the 23d day of said December, I summoned the within named Sampson and Tappan, by giving to each of them in hand a true and attested copy of the within precept; and on the sixth day of January, 1848, I delivered said ship Washington, by order of court, having taken her into custody, December 21, 1847.

ISAAC O. BARNES, *Marshal.*

On the sixth day of January, 1848, the following agreement as to stipulation was filed, viz.:

JOSEPH P. WHEELER et al., libellants,
vs.
THE SHIP WASHINGTON.

In the above entitled suit it is agreed, that the said ship may be delivered up to Charles Homer, as agent for Caroline McFarland, L. E. Stainback, and C. F. Osborne, owners, they stipulating in the usual form, by Homer, as attorney, and with Homer and Sprague, as sureties, in the sum of twelve thousand dollars, for damages and costs.

THOMAS B. POPE,
Proctor for libellant.

Stipulation for costs.

Appeared L. E. Stainback, Caroline McFarland, and Charles F. Osborne, of the State of Virginia, by their agent, C. Homer, of Boston, in the district of Massachusetts, and produced for surety Charles Homer and J. B. C. Sprague, both of Boston, in said district, merchants and co-partners, under the firm of Homer & Sprague; and the said Stainback, McFarland, and Osborne, by their said agent, and the said Homer and Sprague as sureties, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors, and administrators, jointly and severally, in the sum of two hundred dollars, unto the said Joseph P. Wheeler et al., that the said Stainback, McFarland, and Osborne, shall pay all costs and expenses which shall be awarded against them in this suit, upon the final adjudication thereof, or by any interlocutory order.

And on said sixth day of January, 1850, the following claim was filed, viz.:

And now, L. E. Stainback, Caroline McFarland, and C. F. Osborne, of the State of Virginia, intervening for their interest in said ship, appear before this honorable court, by Charles Homer and J. B. C. Sprague, both of Boston, in said district, merchants and co-partners, under the firm of Homer & Sprague, their attorneys, and declare they are the owners of said ship, and that they are desirous that she may be liberated from the custody of this honorable court, to the end that she may proceed to sea.

Wherefore the said Stainback, McFarland, and Osborne, claim the said ship, and that she may be restored to them upon such terms and conditions as to your honor shall seem meet.

L. E. STAINBACK,
CAROLINE McFARLAND,
CHARLES F. OSBORNE.
By C. HOMER, *Agent.*

Boston, January 6, 1848.

Boston, January 6, 1848. Sworn to before me,
S. E. SPRAGUE, *Clerk.*

Stipulation to the action.

Then appeared L. E. Stainback, Caroline McFarland, and Charles F. Osborne, of the State of Virginia, by their agent, C. Homer, of Boston, in the district of Massachusetts, and produced for sureties, Charles Homer and J. B. C. Sprague, both of Boston, in said district, merchants and co-partners, under the firm of Homer & Sprague.

And the said Stainback, McFarland, and Osborne, by their said agent, and the said Homer & Sprague, as sureties, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors, and administrators, jointly and severally, in the sum of twelve thousand dollars, unto the said Joseph P. Wheeler et al., that the said Stainback, McFarland, and Osborne shall abide by all orders and decrees, interlocutory or final, of the court, and shall pay the amount of the final decree of the court, and all sums of money that they shall be ordered to pay by the final decree of the court, whether it be in this or any appellate court.

Stipulation being thus given, a warrant to deliver issued on said sixth day of January, A. D. 1848, directing the marshal to cause said ship, her tackle, apparel, and furniture, to be delivered to the claimants aforesaid, on which the marshal made return, as follows, viz. :

UNITED STATES OF AMERICA,
Massachusetts district, ss.

BOSTON, *January* 6, 1848.

Pursuant to the within precept, I have caused the within named ship Washington, tackle, &c., to be delivered to the claimant within named, and have taken his receipt for the same as under.

J. O. BARNES, *Marshal.*

January 6, 1848. Received from J. O. Barnes, marshal in and for the district of Massachusetts, the within named ship, her tackle, apparel, and furniture, in the same state as when seized and detained by him.

L. E. STAINBACK,
CAROLINE McFARLAND,
CHARLES F. OSBORNE,
By C. HOMER, *Agent.*

And on the 18th day of January, A. D. 1848, the following answer was filed in the clerk's office, viz.:

To the honorable Peleg Sprague, judge of the district court of the United States, within and for the district of Massachusetts.

And now, Caroline McFarland, widow, and L. E. Stainback, merchant, both of the State of Virginia, intervening for their several and respective interests in the ship Washington and her freight, appear before this honorable court, and for answer to the libel and complaint of Joseph P. Wheeler, William A. Rea, Edward Crosby, and Frederick Tudor, against the ship Washington, her furniture, tackle, apparel, and freight, and against all persons lawfully intervening for their interest therein, allege and articulately propound as follows:

First. As to the fourth article in the said libel, these respondents say that they have no personal knowledge thereof; but, upon information and belief, they deny that the said libellants, at the time of the filing of said libel, were the true and lawful owners of the ship "Mary Frances" and her cargo, or that they have lawful right to claim the damages by them in said libel claimed; and these respondents pray that the said libellant may be put to proof thereof.

And these respondents do not admit any of the matters and things in said libel stated to be true, excepting so far as the same are hereinafter expressly admitted, and the libellants are required to prove the same in every particular, if they deem it material so to do.

Second. That these respondents are the owners of the ship Washington, her tackle, apparel, furniture, and freight, and they allege that, on the eleventh day of November last, the said ship was upon the high seas, prosecuting a voyage from Liverpool, in the United Kingdom of Great Britain and Ireland, to Staten Island, in the State of New York; that the said ship is of about five hundred tons burthen, and was then tight, staunch, and strong, well manned and equipped.

Third. That these respondents have been informed and believe, that at or about three and one-half o'clock on the morning of said eleventh of November, a collision took place between the said ship Washington and the Mary Frances; but these respondents were not present at the time, and have no personal knowledge of the circumstances attending the same.

Fourth. That these respondents have been informed and believe, that on said morning of said eleventh of November, the said ship Washington, upon the high seas as aforesaid, was between George's shoals and the south shore of Nantucket island, at the distance of about sixty miles from land. That before and at the time said collision took place, the Washington was in charge of the second mate, and a competent crew. That the wind was blowing a moderate breeze from the south southwest, and the Washington, with all her reefs out, with courses free and maintop-gallant sails, jib, and flying-jib, and fore and maintopmast-stay-sails set, was sailing "full and by" upon the larboard tack, and was steering due west by compass, and as near the wind as possi-

ble; that said ship then had a competent watch on deck, keeping a good look out. That the weather was then dark and hazy towards the horizon, and especially to the leeward of said ship, but the stars were visible above.

Fifth. That while the Washington was sailing as aforesaid upon said tack, and at about half-past three o'clock in said morning, the Mary Francis was seen about four points on the lee bow of the Washington, and that the Mary Francis was then in the act of running up, and did immediately run up into the wind, athwart the hawse of the Washington, and that instantly upon the discovery of the said ship Mary Frances, and of the course she was pursuing as aforesaid, the helm of the Washington was put "hard up," and every endeavor was made by those on the deck of said ship to put her before the wind, and to avoid collision with the Mary Frances.

Sixth. And these respondents are informed and believe, that the course so adopted by the officers and crew in charge of the Washington was the proper course to be pursued, and that all measures were taken by them which, under the circumstances of the case, could have been taken to avoid collision with the Mary Frances. That no light was exhibited by the Mary Frances, and that neither the officer or those of the crew of the Washington who were on her deck at that time, heard any voices or hailing from the Mary Frances.

Seventh. And these respondents admit that a collision took place as aforesaid between the ship Washington and the Mary Frances; and they admit the damage caused thereby to the Mary Frances and her cargo, as alleged in said libel. And these respondents allege that, by said collision with the Mary Frances, the bowsprit head and cutwater of the Washington were carried away, as were also a large portion of her bulwarks, together with her boom and the iron on her fore yard, and that much damage was caused to the said ship in other respects; and that these respondents have expended the sum of five thousand dollars, or thereabouts, in putting said vessel in a proper condition to complete her said voyage, and to repair the effects of said collision. And these *libellants* deny that there was any negligence on the part of the officers or crew of the Washington; and they allege that the officer and crew used the greatest care and skill in *her* management of said ship on the morning aforesaid, and took every proper precaution to prevent the occurrence of any accident.

Eighth. And these respondents further allege, that said collision took place in consequence of the course adopted by the Mary Frances, in coming up into the wind as aforesaid, and running athwart the hawse of the Washington; and they allege that the said collision is to be attributed to misconduct or negligence on the part of her officers or crew, and that if the same was not caused by such negligence or misconduct on the part of the officers or crew of the Mary Frances, it is to be attributed solely to accident. That such collisions do in fact occasionally happen on the high seas, without fault or negligence on either side, and that said collision between the Washington and the Mary Frances is

not, in any wise, to be imputed to negligence or improper seamanship on the part of those having charge of the Washington, and that said ship cannot justly be charged therewith.

Ninth. That all and singular the premises are true; in verification whereof, if denied, these respondents crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore, these respondents pray that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise right and justice to administer in the premises.

For the owners, CAROLINE McFARLAND &
L. E. STAINBACK,
CHAS. HOMER, *Agent.*

WM. SOHIER, *Proctor.*

January 18th, 1848, sworn to before me,
S. E. SPRAGUE, *Clerk.*

This libel was entered at a special district court held on the twenty-fourth day of December, A. D. 1847, and thence was continued, from time to time, until this tenth day of June, A. D. 1850; and now it appearing that the judge of this court is concerned in interest in this suit, so as to render it improper, in his opinion, to sit in the trial thereof, it is, on application of the claimants, ordered by the court, that the foregoing fact be entered on the records of this court, and that an authenticated copy of such records, together with all the proceedings in this suit, be forthwith certified to the next circuit court of this district.

A true copy of record. Attest:
S. E. SPRAGUE, *Clerk.*

And now, on this twenty-sixth day of May, A. D. 1851, the death of Joseph Porter Wheeler, one of the libellants aforesaid, being suggested to the court, it is ordered that William A. Rea, administrator of his estate, be summoned to appear and prosecute said libel.

Whereupon a summons issued to the marshal, and is as follows, viz:

UNITED STATES OF AMERICA,
Massachusetts district, ss.

[L. S.] The President of the United States of America, to the marshal of the district of Massachusetts, or either of his deputies, greeting:

You are required to summon William A. Rea, of Boston, in the county of Suffolk, in said district, as he is administrator of the goods and estate of Joseph Porter Wheeler, late of Boston, in said district, merchant, deceased, libellant in a certain process in admiralty, against the ship Washington, her tackle, freight, and owners, if he may be found in your district, to appear before the judges of the circuit court of the United States, to be holden at Boston, within and for the district of

Massachusetts, on Wednesday, the twenty-eighth day of May, now current, at three and one-half o'clock in the afternoon of the same day, and prosecute said suit, to be then and there tried between them.

Hereof fail not, and make due return of this writ, with your doings thereon, unto our said court, as soon after the service thereof as may be.

Witness the honorable Roger B. Taney, at Boston aforesaid, the twenty-sixth day of May, in the year of Lord one thousand eight hundred and fifty-one.

ISAAC O. BARNES, *Clerk.*

On which the marshal made return as follows, viz:

UNITED STATES OF AMERICA,
Massachusetts district, ss.

BOSTON, *May 27th*, 1851.

Pursuant hereunto, I this day summoned the within named William A. Rea, administrator of Joseph Porter Wheeler, to appear as within commanded, by giving him in hand a true copy hereof.

J. H. RILEY,
U. S. deputy marshal.

Answers of Wm. F. Parrott, Henry H. Loring, and Ebr. Davis, experts, to interrogatories proposed to them by libellants and respondents, in the aforesaid cause.

Libellants' interrogatories to experts.

1st. If two ships were approaching each other in opposite directions with a given wind, each close hauled, one on the starboard and one on the larboard tack, is it not proper to fix the vessels at six points from the wind?

2d. Do not two vessels so approaching come together at a fixed and well known angle; and what angle is it?

3d. Does or not the plan exhibited by libellants exhibit the ships Mary Francis and Washington at that angle correctly, with the wind southwest? If not, please state wherein it is incorrect in this respect.

4th. Do either or both of the ships so approaching necessarily see each other over the same bow; and which bow is it?

5th. Do not the ships from discovery till they meet, when so approaching at equal rates, keep the same relative position to each other, and bear on the same bow?

6th. When two ships are so approaching, close hauled on a given wind, can or not either ship be materially to the leeward of the other?

7th. If when two such ships sailing equally fast strike, one is struck amidships on the larboard side, does not that clearly indicate that the ship so struck was all the time to the windward of the other?

8th. In case the ship on the larboard tack gives the order to put her helm up when the ships are near striking, does that or not show that the ship's crew believed themselves to be to the leeward of the other?

9th. Can men on the deck of a vessel, seeing another vessel approaching, well judge as to the points of the compass at which they see the approaching vessel?

10th. What look-out should have been kept on board the Washington on the night of the collision upon the coast, with noisy passengers on board?

11th. If two ships were so approaching closed hauled on different tacks, and the ship on the larboard tack is to windward when a collision is apprehended, and she should put her helm up, would that not inevitably produce collision?

12th. Suppose two vessels approaching on different tacks close hauled at 5½ knots, at what distance might the vessel on the larboard tack by putting her helm up have avoided a collision, the other vessel keeping close hauled or luffing?

13th. Suppose the night to be as stated in respondent's first interrogatory, except that the stars were above, and merely an ordinary haze on the horizon, how far could the vessel be seen?

Respondents' interrogatories.

1. Is it easy to judge accurately of the distance of a vessel when first seen from another vessel at sea, in a December night, on soundings, sixty miles off Nantucket, or thereabouts, the weather being hazy, the horizon dark, there being no moon visible, and the stars appearing overhead at intervals?

2. Under such circumstances, is it not more difficult to judge accurately of the distance between two ships when both are close hauled, and approaching each other on opposite tacks, than when in other position?

3. At such time and place, and in such a state of weather, are not distances at sea very deceptive?

4. May it not frequently happen under such circumstances, that it is impossible for one of two vessels approaching each other on opposite tacks, each being closed hauled, going at the rate of five and half knots, with all the sail set, except main royal and flying jib, to be seen from the other in time to avoid a collision?

5. In such a state of weather, and with the vessel as in the last interrogatory, can one of the ships be readily seen from the other a quarter of a mile off?

6. Where two ships are approaching each other on opposite tacks, each being close hauled, and going at the rate of five knots and a half, with all sail set, except main royal and flying jib, how long a time, before they come together, must one be seen from the other in order to avoid a collision?

7. Where the speed and course of the two ships are as stated in the last interrogatory, but one ship is of about three hundred and twenty tons, with a full cargo of ice, with all her sail set, except the main royal and flying gib, and the other is of five hundred tons with only sufficient

cargo to put her in safe ballast trim, and has all her sail set but her main royal, is there any difference in the distance at which one can be seen from the other; and if so, which can be seen at the greatest distance?

8. Is not a person on board one of the ships in the position and under the circumstances set forth in the fourth interrogatory less likely to be accurate with regard to the distance, than with regard to the bearings of the other ship or of other objects?

9. Is not such an observer less likely to be accurate in his estimate of the time taken by such ships to come together, than in the bearings of one ship when first seen from the other?

10. If a ship close hauled on the larboard tack is seen from a ship close hauled on the starboard tack, a quarter of a mile off, one and a half points forward of the larboard beam, and both keep these courses, each sailing five and a half knots per hour, what part of the latter, if any, will the first strike?

11. If a ship close hauled on the larboard tack is seen from a ship close hauled on the starboard tack, one and a half points forward of the larboard beam, and both keeping these courses, and sailing five and a half knots per hour, the first ship strikes the second amidships on the larboard side, how far off must the first have been when first seen?

12. If Washington, when first seen from M. Francis, was seen about 3 or 4 points off M. Francis' lee bow, and heading across M. Francis' fore foot, and they came together, Washington striking M. Francis about midships, must not the vessels have been very near when first seen?

13. Suppose the Washington, seen a little on M. Francis' larboard bow, and about $\frac{1}{4}$ mile distant, and the Washington going about 3 points free, the M. Francis being close hauled, would the Washington strike the M. Francis, and if so, where?

14. If the Washington discovered the Mary Francis only one minute before the collision, and each going $5\frac{1}{2}$ knots per hour, and close hauled, could the Washington readily avoid the collision.

15. Where should a man be, and what doing, who keeps a look-out when the vessel is on a wind at night?

16. If the Washington had first seen the Mary Francis $\frac{1}{8}$th of a mile off, under the circumstances stated in 14th question, might not collision occur without any improper seamanship on the part of the W.?

17. Is it safe and usual at sea to employ all the watch at the pump at night, except the man at the look-out and the man at the helm?

The undersigned having been requested to act as experts in a case of collision at sea between the ships Mary Francis and Washington, and having had certain interrogatories proposed to them by libellants and respondents, respectfully submit the following:

Answers to interrogatories by libellants.

1. It is.

2. They do; on an angle of two points.

3. It does not; on that plan the wind is represented as at south by west; the Washington steering west and the Mary Francis east south-east, placing each ship seven points from the wind, and the angle of sailing one point.
4. They do; over the lee bow.
5. They do.
6. No.
7. Not more than half the length of the ship.
8. It does not.
9. They cannot.
10. One man upon each side of the forecastle and the officer upon the quarter-deck. (Opinion of Davis.)

All the watch forward as usual, and officer upon quarter-deck; when, however, the men are called to pump ship, or other work, then one man upon forecastle. (Opinion of Loring.)

One man upon weather side of forecastle, or in such position forward as to have the best possible view of the horizon from three points on the lee bow round to windward. (Parrott.)

11. It would.
12. Six hundred feet.
13. Uncertain.

Answers to interrogatories by respondents.

1. It is not easy.
2. More difficult; vessels approaching each other by the wind present to the eye the edges of their sails, and not the flat surface as in other positions.
3. They are.
4. It would not frequently, but sometimes happen, under such circumstances, that it is impossible to avoid a collision, even if a good look-out was kept on board both ships.
5. She cannot.
6. Less than a minute.
7. No material difference; the largest vessel would certainly be seen the farthest off.
8. He is.
9. He is.
10. Would not strike at all.
11. Less than two hundred feet.
12. Very near indeed.
13. She would go clear if seen one point or more on the lee bow.
14. She could not, because some time would be consumed in giving orders and having them understood.
15. Amidships on the forecastle, forward of foremast, looking about him. (Davis and Loring.)

On the weather side of forecastle, walking about. (Parrott.)

16. It might.
17. It is customary, and considered safe.

WM. F. PARROTT,
HENRY K. LORING,
EBR. DAVIS.

Libellants' interrogatories to experts.

1. If two ships were approaching each other in opposite directions, with a given wind, each close hauled, one on the starboard and one on the larboard tack, is it not proper to fix the vessels at six points from the wind?

2. Do not two vessels, so approaching, come together at a fixed and well-known angle; and what is it?

3. Does or not the plan exhibited by libellants, exhibit the ships Mary Frances and Washington at that angle correctly, with the wind southwest? If not, please state wherein it is incorrect in this respect.

4. Do either or both of the ships, so approaching, necessarily see each other over the same bow; and which bow is it?

5. Do not the ships, from discovery till they meet, when so approaching at equal rates, keep the same relative position to each other, and bear on the same bow?

6. When two ships are so approaching, close hauled on a given wind, can or not either ship be materially to the leeward of the other?

7. If, when two such ships, sailing equally fast, strike, one is struck amidships on the larboard side, does not that clearly indicate that the ship so struck was all the time to windward of the other.

8. In case the ship on the larboard tack gives the order to put her helm up, when the ships are near striking, does that, or not, show that the ship's crew believed themselves to be to the leeward of the other?

9. Can men on the deck of a vessel, seeing another vessel approaching, well judge as to the points of compass at which they see the approaching vessel?

10. What look-out should have been kept on board the Washington on the night of collision upon the coast with noisy passengers on board?

11. If two ships were so approaching, close hauled on different tacks, and the ship on the larboard tack is to windward when a collision is apprehended, and she should put her helm up, would that not inevitably produce collision?

12. Suppose two vessels approaching on different tacks, close hauled, at $5\frac{1}{2}$ knots, at what distance might the vessel on the larboard tack, by putting her helm up, have avoided a collision, the other vessel keeping close hauled, or luffing?

13. Suppose the night to be as stated in respondent's first interrogatory, except that the stars were above, and merely an ordinary haze on the horizon, how far could the vessel be seen?

The following depositions were used in the aforesaid cause, viz:

UNITED STATES OF AMERICA.

The district court of the United States, within and for the Massachusetts district.

MASSACHUSETTS DISTRICT, *ss.*

To any attorney, or counsellor at law, at Savannah, in Georgia, or at Charleston, in South Carolina, or at New Orleans, in Louisiana.

Know ye, that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed, of George White, of Bath, Maine, mariner, now commorant at said Savannah or said New Orleans. Witness to be examined on behalf of the libellant, and to be used in a certain cause now pending in said court, wherein J. P. Wheeler et al. are libellants versus the ship Washington.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you; and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced, to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein, enclosed, sealed, and directed to the district court aforesaid, as soon as the same shall have been executed.

In testimony whereof we have caused the seal of the said district court to be hereunto affixed.

Witness the honorable Peleg Sprague, at Boston, this thirty-first day of January, in the year of our Lord one thousand eight hundred and forty-eight. S. E. SPRAGUE, *Clerk*.

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent, whilst giving deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the depositions to writing. And you shall put the several interrogatories and cross interrogatories to the deponent in their order, and take the answer of the deponent to each fully and clearly.

Commissioner's fee,	$30 00
Witnesses' fee,	5 00
	$35 00

UNITED STATES OF AMERICA,
Massachusetts district, ss. 1848.

J. P. WHEELER and others, libellants,
vs.
The ship Washington, &c.

Interrogatories to be proposed to George White, of Bath, Maine, mariner, now commorant at Savannah, in the State of Georgia, or at New Orleans, in the State of Louisiana, a witness to be produced and examined in behalf of the libellants.

First. What is your age, what is your occupation, or employment, and how long have you been in your present occupation; and where do you reside?

Second. Whether or not you were employed during the year eighteen hundred and forty-seven on board the ship Mary Frances, of Boston, and on what voyage were you last employed on said ship; when did said ship leave Boston; where was she bound; what was her cargo; how many men had she on board on said voyage; and what was the name of your captain and first mate?

Third. Whether or not was the Mary Frances, when she sailed from Boston, strong, staunch, and seaworthy for her intended voyage, and sufficiently manned and equipped?

Fourth. How long did said ship continue on her voyage; and how was said voyage terminated; if you say said ship came in collision with another ship at sea, please state the name of said other ship; when said collision took place, giving the day of the week and of the month, and the hour of the day; and also state what was the matter at the time.

Fifth. Please state which watch was on deck on board the Mary Frances, when the Washington was first seen; of how many men said watch consisted, and their names, and who commanded said watch, and how many of said watch were on deck, and who of them.

Sixth. Please state, as particularly as you can, the time when said ship Washington was first seen from the Mary Frances, and by whom; how far distant the Washington then was from the Mary Frances, also the position of the Washington relatively to the Mary Frances; was the Washington on your starboard or larboard bow?

Seventh. Which way or in what direction was the Mary Frances standing; which way was the wind; what tacks had the Mary Frances on board; and under what sail was she standing when the Washington was first discovered?

Eighth. How was the Washington standing; and under what sail, and what tacks had she on board when she hove in sight.

Ninth. Who was at the helm of the Mary Frances when the Washington hove in sight; what orders, if any, did you give prior to the ships coming in contact; and what was done on board of the Mary Frances in order to avoid the collision?

Tenth. How much time elapsed after the Washington was first seen before she struck the Mary Frances?

Eleventh. Please state whether or not you and your watch, and how many of them, hailed the Washington; and if yea, how soon after you first discovered her?

Twelfth. What tacks had the said ship Washington on board at the time she struck the Mary Frances; and whether or not she had altered her course after she was hailed, or was seen from the Mary Frances?

Thirteenth. Please state what damage was done by the collision to the Mary Francis, and what became of the said ship and her cargo and crew; if you say that crew of the Mary Frances abandoned her at sea, state in what condition she was when abandoned, and what efforts were made to bring her into port, or keep her afloat, and how long after the collision she was abandoned.

Fifteenth. In what part of the vessel were you when you first saw the Washington; was she seen plainly and distinctly or otherwise; was there, or not, any reason why the Mary Frances could not have been seen as soon and as clearly from the Washington as the Washington was from the Mary Frances; if yea, what was it?

Sixteenth. If, when you first saw the Washington, her helm had been put up, would she or not in your judgment have come in collision with the Mary Frances? Please state the reasons of your judgment, and whether or not you have any doubt about it.

Seventeenth. Have you or not any reason to believe that the Mary Frances was not seen from the Washington as soon as the Washington was seen from the Mary Frances? If yea, please to state them as fully and particularly as you can.

Eighteenth. Whether or not was it dark at the time of said collision, and how dark; was there or not any moon, and did or not the Washington carry any lights?

Nineteenth. Whether or not there was, in your judgment, time and room enough after the Washington was seen from the Mary Frances, and hailed by you for the crew of the Washington to have changed her course, and kept her clear of the Mary Frances?

Twentieth. Whether or not was there a good look-out kept on board the Mary Frances up to the time of the collision; whether or not the watch were at their proper stations when the Washington was first seen, and whether or not was there any one stationed forward?

Twenty-first. Whether or not did the Mary Frances carry a light; if yea, where was it placed, and whether or not could it be seen from the Washington?

Twenty-second. Whether or not, if a good look-out had been kept on board the Washington, the Mary Frances must have been seen in time to avoid the collision; and have you or not any doubt about this?

Twenty-third. Have you or not any reasons to believe that a good look-out was not kept on board of the Washington? If yea, please to state all the reasons of such belief. (Objected to.)

Twenty-fourth. Whether or not did you hear anything said by the officers or crew of the Washington relative to there not having been a good look-out kept on the morning of the collision, on board the Washington; if yea, when and by whom, and what was said? (Objected to.)

Twenty-fifth. Whether or not was there anything which could have been done by those on board the Mary Francis to prevent the collision; if yea, what, and why was it not done?

Twenty-sixth. Whether or not was the Mary Francis hailed from the Washington, or any thing done on board of her, that indicated that the Mary Frances was seen before the collision occurred?

Twenty-seventh. If nothing had been done on board the Mary Frances, whether or not would the collision have occurred; or would or would not the Mary Frances have gone ahead far enough to clear the Washington?

Twenty-eighth. If the helm of the Washington had been put up when she was hailed from the Mary Frances, would or would not, bringing the Mary Francis close to the wind, and putting her helm hard down, have helped to keep the two ships clear of each other?

Twenty-ninth. Please state the latitude and longitude when said collision occurred.

THOMAS B. POPE,
Proctor for libellants.

Cross interrogatories to be propounded to George White, in behalf of the respondents.

1. Were you not the officer in charge of the Mary Francis at the time said collision took place; who composed the watch on deck at that time; who was on the look-out when the Washington was first seen; in what part of the Mary Frances, and on which side of the vessel, was the look-out kept?

2. Who first saw the Washington; how far from the Mary Frances was the Washington at that time; what means have you of knowing the distance?

3. At what rate was the Mary Frances sailing when you first saw the Washington, and in what direction by the compass?

4. How many points to windward of the Mary Francis was the Washington when she was first seen; who hailed the Washington from the Mary Francis; when was the Washington first hailed; how long after you first saw her?

5. What was the Washington hailed to do; was there not some difference of opinion between those on board the Mary Frances as to the best course for the Washington to pursue, and did not some of the crew on the decks of the Mary Francis hail the Washington to act differently from what others hailed; were the crew on board the Mary Frances unanimous in hailing the Washington, and pointing out to her the proper course to take; why was this difference of opinion?

6. From what quarter was the wind when you first saw the Wash-

ington; how hard did the wind blow; how was the Washington steering when you first saw her; how do you know this?

7. How long after you first saw the Washington did the collision take place; were you not satisfied that the Washington did not see the Mary Francis as soon as the Mary Francis saw the Washington; were you not convinced of this before the collision, and did not such conviction influence you in deciding upon the course for the Mary Frances to pursue?

8. When you first saw the Washington, would it have been practicable for the Mary Frances to have avoided the Washington, or so to alter her course as to prevent the collision? If so, state by what means and by taking what course the Mary Frances could have avoided the Washington.

9. Why were not those means used, and why was not that course adopted by the Mary Frances, when you first saw the Washington, and saw that she continued on her course?

10. When did the Mary Frances begin to run up into the wind; how soon after the Washington was first seen; how far had the Mary Francis moved after she was run up into the wind before the collision took place?

11. If, in answer to the fifteenth direct interrogatory, you state that the Mary Frances could have been seen from the Washington as far as the Washington from the Mary Frances, state whether, in so stating, you take into consideration the state of the weather, and the relative size of the vessels.

12. When you first saw the Washington, what sails were set on board the Mary Frances, and at what rate was she sailing?

13. Of how many tons burden was the Washington in your opinion, and of how many was the Mary Frances?

14. How much further, on such a night as that of the collision, could the Washington be seen, than the Mary Frances by an indifferent observer; which vessel was the highest in the water?

15. Had the Mary Frances any other light lighted on her deck, before the collision, than the binnacle light; had not the Washington her binnacle light also lighted; could not the Washington's light have been seen as far from the Mary Frances as the Mary Francis's light from the Washington? If not, state particularly why not.

16. What is the age of the Mary Frances?

17. Of what did her cargo consist; would the Mary Frances, laden with ice, have sunk, in your opinion; was it, in your opinion, proper for her master to have deserted her at the time he did; could no measures have been taken to bring her into port?

18. Why did not the master resort to those measures?

19. If in answer to the third interrogatory direct you state that the Mary Frances was sea-worthy, &c., please state from what circumstances you infer her to have been so. What requisites are, in your judgment, essential to that quality in a vessel; did you, and when, make any, and what, examination of the Mary Frances to ascertain

foretop-gallant-mast carried away; the foremast split to pieces; all the head gear carried away. We abandoned the ship with thirteen feet of water in her hold, being a wreck, and unmanageable. The cargo (being of ice) was left. The crew were taken on board of the Washington, the officers also, and were taken to Boston. We remained by the ship until ten o'clock on Saturday morning, and made every effort to keep her afloat; but she was water logged and unmanageable, and it was utterly impossible to keep her afloat, or to take her into port.

14. (Interrogatory erased.)

15. To the fifteenth direct interrogatory he answers and says: When I first saw the Washington I was in the larboard gangway. She was not seen plainly, the weather being hazy. There was no reason, that I know of, why the Mary Francis could not have been seen as soon and as clearly from the Washington as the Washington from the Mary Francis.

16. To the sixteenth direct interrogatory he answers and says: If the helm of the Washington had been put up when first seen from the Mary Francis, she would not, in my judgment, have come in collision with the Mary Francis. My reason is, that if the Washington had put her helm hard up she would have gone clear, because she would then have fallen off before the wind, and gone free; whereas the Mary Francis, by falling off before the wind, would have gone into the Washington. There was no other course which could have been adopted to avoid the collision. I have no doubt upon the subject.

17. To the seventeenth direct interrogatory he answers and says: The only reasons I have for supposing that the Mary Francis was not seen from the Washington as soon as the Washington was from the Mary Francis, are, that she did not answer our hail, or change her course. If a proper look-out had been kept on board the Washington they must have seen us.

18. To the eighteenth direct interrogatory he answers and says: The weather was hazy and thick; the sky was overcast; no moon or stars visible. I saw no lights on board the Washington.

19. To the nineteenth direct interrogatory he answers and says: In my judgment there was time and room enough after the Washington was seen from the Mary Francis, and hailed, for the Washington to have changed her course and kept clear of the Mary Francis.

20. To the twentieth direct interrogatory he answers and says: There was as good a look-out kept on board the Mary Francis as ever was on board of a vessel up to the time of the collision. The watch were all at their proper stations when the Washington was first seen. There was a man stationed forward on the look-out.

21. To the twenty-first direct interrogatory he answers and says: The Mary Francis carried no other light but the binnacle light. I do not know whether this light could have been seen from the Washington or not.

22. To the twenty-second direct interrogatory he answers and says: I have already answered this question in a previous answer, and have

no doubt that the Mary Francis could have been seen from the Washington, if a proper look-out had been kept on board the Washington, in time to avoid the collision.

23. To the twenty-third direct interrogatory he answers and says: I have reasons to believe that a good look-out was not kept on board the Washington. My chief reason is, that if a good look-out had been kept she might have avoided the collision.

24. To the twenty-fourth direct interrogatory he answers and says: I understood from some of the crew of the Washington that about the time of the collision they were engaged in pumping out the ship. This was when we had been taken off by the Washington, and were homeward bound. I do not recollect precisely what was said, or by whom.

25. To the twenty-fifth direct interrogatory he answers and says: Nothing more than what was done could have been done on board the Mary Francis to prevent the collision.

26. To the twenty-sixth direct interrogatory he answers and says: The Mary Francis was not hailed from the Washington, nor anything done on board of her that indicated that the Mary Francis was seen before the collision took place.

27. To the twenty-seventh direct interrogatory he answers and says: If nothing had been done on board the Mary Francis the collision would have occurred. She would not have gone ahead far enough to clear the Washington.

28. To the twenty-eighth direct interrogatory he answers and says: If the Washington's helm had been put up when she was hailed, the vessels would have gone clear.

29. To the twenty-ninth direct interrogatory he answers and says: I don't know in what latitude and longitude the collision took place. It was not my business, as second officer, to know.

Cross interrogatories.

1. To the first cross interrogatory the witness answers and says: I was the officer in charge. I have already stated who composed the watch. I do not remember the name of the man on the look-out. The look-out was kept on the forecastle; it was his business to look out on both sides of the ship.

2. To the second cross interrogatory the witness answers and says: I and the look-out first saw the Washington about the same time. To the best of my judgment, from my eye, the Washington was distant little less than a quarter of a mile when first seen. My eye and experience are my sole means of estimating distances. The Mary Francis was going at about five and a half knots.

3. She was heading, according to the best of my recollection, east by south half south.

4. To the fourth cross interrogatory he answers and says: The Washington was not to windward of the Mary Francis, but about a

point and a half forward of our larboard beam. I and all the watch hailed the Washington, a few minutes after she hove in sight.

5. To the fifth cross interrogatory he answers and says: We hailed to the Washington, "hard up your helm." There was no difference of opinion on board the Mary Francis as to the best course for the Washington to pursue, and none of the crew on the deck of the Mary Francis hailed differently from the others. We all hailed unanimously to the Washington to put her helm up.

6. To the sixth cross interrogatory he answers and says: The wind was from the southward when we first saw the Washington; it was a full sail breeze. I think, to the best of my judgment, when I first saw the Washington, she was heading west southwest; I so judge from what I saw and from what happened afterwards.

7. To the seventh cross interrogatory he answers and says: The collision took place about five to seven minutes after I saw the Washington, according to the best of my belief. I was satisfied the Washington did not see us as soon as we saw her. Whether she saw us or not I could have done nothing else than what was done. Even if it [had] been in the middle of the day I could have pursued no other course.

8. To the eighth cross interrogatory he answers and says: The Mary Francis could not, by taking any other course, have avoided a collision.

9. To the ninth cross interrogatory he answers and says: I refer to my previous answer.

10. To the tenth cross interrogatory he answers and says: The Mary Francis was as close to the wind as she could lay when the Washington was first seen. The Mary Francis was close on the wind before the collision, and at the time of the collision she was all shaking.

11. To the eleventh cross interrogatory he answers and says: The Washington was of larger size than the Mary Francis, and the weather was thick; still, I think the Mary Francis might have been seen from the Washington as soon as the Washington from the Mary Francis.

12. To the twelfth cross interrogatory he answers and says: The Mary Francis had all sails set except the main royal and flying jib, and was going at the rate of about five and a half knots when the Washington was first seen.

13. To the thirteen cross interrogatory he answers and says: The Mary Francis was, as near as I can recollect, about three hundred and twenty tons burden. The Washington, I believe, was about five hundred tons.

14. To the fourteenth cross interrogatory he answers and says: I cannot say that the one could be seen further than the other. The Washington was the highest in the water.

15. To the fifteenth cross interrogatory he answers and says: The Mary Francis had no other light but her binnacle light. I don't know whether the Washington had her binnacle light or not. The Washington was crossing stern on, or nearly so, towards the Mary Francis,

which prevented us from easily seeing her light. It is probable that neither light was seen.

16. To the sixteenth cross interrogatory he answers and says: I have heard that the Mary Francis was seven years old; but don't know of my own knowledge.

17. To the seventeenth cross interrogatory he answers and says: The cargo of the Mary Francis was ice. I think that, with such a cargo, she might not have sunk, but might have turned bottom upwards. It was, in my opinion, proper for the master to abandon her at the time he did. It was impossible to bring her to port. No means could have been taken to do so in her condition.

18. To the eighteenth cross interrogatory he answers and says: I refer to my previous answers.

19. To the nineteenth cross interrogatory he answers and says: The Mary Francis was seaworthy, because she was well built, well fastened, and tight; did not leak at all; she had good sails and rigging, well equipped in every way; had good boats and a good crew. I consider these the requisites of a seaworthy vessel. While in Boston harbor I cleaned the vessel and examined her, and I know that she possessed all those requisites and each of them. I was long enough in her to test her seaworthy qualities.

20. To the twentieth cross interrogatory he answers and says: I know of nothing further that can benefit the respondents, the owners of the Washington.

GEORGE WHITE.

Answered, sworn to, reduced to writing, and subscribed by the witness at the bottom, and on each sheet before me, at Savannah, Georgia, this 10th February, 1848.

In witness whereof I have hereto set my hand and seal.

FRANCIS S. BARTON, [SEAL.]
Attorney-at-law, commissioner.

The deposition of Christian Bennett.

I, Christian Bennett, of Copenhagen, twenty-three years of age, on oath depose and say, in answer to interrogatories for libellants, by Mr. Pope:

What is your occupation and residence?

Ans. I am a mariner, and have been second mate, and have followed the seas about eleven years; I reside at Copenhagen.

2. Were you or not employed during the year 1847, on board the ship Mary Francis, of Boston; in what capacity, and on what voyage were you last employed on board of her?

Ans. I was employed on board the Mary Francis as foremast hand, and the last voyage was from Boston to New Orleans.

3. Who was captain of the Mary Francis on her last voyage; who were her first and second mates, and how many men had she on board?

Ans. Captain Crosby was master. Mr. Brown, I think his name was, was first mate, Mr. White was second mate, and there were eight men before the mast.

4. When did said ship sail from Boston on said voyage, and what was her cargo?

Ans. I don't recollect when she sailed, but the cargo was ice.

5. Was or was not the Mary Francis, when she last sailed from Boston, strong, staunch, and seaworthy for her intended voyage, and sufficiently manned and equipped?

Ans. Yes, sir.

6. How long did the Mary Francis continue on her voyage, and how was said voyage ended?

Ans. She was five days on her voyage, I think, or about that, and she was run down and lost.

7. If you say the Mary Francis came in collision with the ship Washington, at sea, please to state in what latitude and longitude the collision took place.

Ans. It was about one hundred and fifty miles off Cape Cod, as the captain said, that she came in contact with the Washington about 3 o'clock, a. m. The latitude and longitude I don't know.

8. Which watch on board the Mary Francis was on deck when the Washington was discovered; who commanded said watch; how many men were then in said watch, and who of them were on deck at the time?

Ans. The captain's watch was on deck when the Washington was discovered. The second mate, Mr. White, had charge of the watch; all the watch (four) on deck, myself, Frederick, Peterson, and Christian Smith, and Peter Miller, who died.

9. Who first saw the Washington from the Mary Frances?

Ans. I believe I did.

10. How far apart were the two ships when you first saw the Washington; was she then upon the larboard or starboard bow of the Mary Frances?

Ans. The distance when I first saw her was about a quarter of a mile, I think, and on our larboard bow.

11. Which way was the wind when the Washington was first seen, and when the ships struck?

Ans. I can't tell.

12. I can't tell by the compass how she was standing; the Mary Frances had her starboard tacks on board, and a jib staysail, fore topsail, foresail, and fore top-gallantsail, mainsail, main topsail, and main top-gallantsail, and mizen topsail, and spanker; all the reefs out.

13. Which way was the Mary Frances standing when the Washington hove in sight; what tacks had the Mary Frances on board, and under what sail was she?

Ans. I can't tell which way she was standing by the compass; she had larboard tacks on board, and I think she had all sail except royals.

14. Please state how the Mary Frances and the Washington were standing relatively to each other?

Ans. The Washington was on our lee bow, say three or four points, and heading across our forefoot.

15. How soon did the Mary Frances and the Washington strike, after the Washington was seen?

Ans. In about nine or ten minutes, I should judge so.

16. Who had the helm of the Mary Frances when the Washington hove in sight; what orders were given on board the Mary Frances, and who gave them?

Ans. Peter Miller, who died, had the helm. I don't know who gave the orders, they were given aft; I heard the second mate's voice, but don't know what he said.

17. What was done on board the Mary Frances to prevent the collision?

Ans. The ship was luffed up in the wind—all that could be done. She was luffed close as soon as she saw the Washington.

18. Who had the command of the deck of the Mary Frances when the Washington hove in sight?

Ans. The second mate.

19. Whether or not was the Washington hailed from the Mary Frances as soon as she was seen, and by one or more, or how many of the crew?

Ans. She was hailed, but not as soon as she was seen, for there was no need of it; she could not have heard it. She was hailed as soon as she could hear it by me; and the second mate hailed her, but it was then too late. I cried out, ship ahoy, hard up your helm, five or six times in succession.

20. When the Washington was hailed, was or not any reply from her, or any thing done by her?

Ans. No, sir.

21. Did or did not the Washington alter her course after she was hailed?

Ans. She did not.

22. What part of the Mary Frances did the Washington strike, and how did she come upon her?

Ans. She struck the Mary Frances on the larboard side, three or four feet abaft the fore rigging, coming stem on to her.

23. State what damage was done to the Mary Francis by the collision.

Ans. Her beams were knocked through, so as to start the planks on the opposite side to where she was struck, or her starboard planks; her fore rigging and fore topmast were carried away, and her mizen topsail was split to pieces. I got into the ship that struck us as soon as I could, and it was dark; I didn't see much; I did not see that our deck was split.

24. What became of the Mary Frances, and her cargo and crew, after the collision?

Ans. The crew were taken from the wreck of the Mary Frances to the Washington about eight o'clock; the Mary Frances was then abandoned in a sinking condition, and at the last time I saw her she was going before the wind, and sunk down so that the water was three feet over the forecastle deck.

25. In what part of the vessel were you when you first saw the Washington; did you see her plainly and distinctly, or how otherwise?

Ans. I was forward of the windlass, and first saw her dimly, but she was going rapidly, and I soon saw her plain.

26. Was there or not any reason why the Mary Frances could not be seen as soon and as clearly from the Washington, as the Washington was seen from the Mary Frances; if yea, what was it?

Ans. There was no reason why she couldn't.

27. Whether or not any of the crew or officers of the Mary Frances went on board the Washington immediately after the ships struck; if yea, which of them?

Ans. All but two or three went on board the Washington; the captain came up out of the cabin without his clothes, and jumped on board the Washington, and we followed; then we thought both ships were sinking, and had rather sink in our own, and we returned to her.

28. What tacks had the Washington on board when she struck the Mary Frances; had or had not any change been made in her course since she came in sight?

Ans. The larboard tacks; her course was not changed as we could see.

29. When you first saw the Washington, could you or not see which way she was steering, and on what tack she was standing; if not, how soon could you?

Ans. When we first saw [her] we couldn't; she was rather dim; but soon we could see how she steered, and on what tack she was—in a few minutes after we first saw her.

30. Whether or not there was room and time enough, after the Washington was hailed, for the Washington to have kept clear of the Mary Frances, or how otherwise.

Ans. There was I think plenty of time and room for the Washington to clear us; if she had kept off when first hailed, I think she would have cleared us by three ship's length.

31. Was it or not dark, and how dark, when the Washington was seen; was there any moon?

Ans. It was pretty dark; not so very dark, it was a little hazy; there was no moon, I believe.

32. Did or did not the Washington or Mary Frances carry any lights; if yea, where?

Ans. No, sir.

33. Have you or not any reason to believe that the Mary Frances was not seen from the Washington, as soon as the Washington was seen from the Mary Frances? If yea, please state such reason as fully as you can.

Ans. I think so, because the Washington did not alter her course.

34. Whether or not, if a good look-out had been kept on board the Washington, must the Mary Frances have been seen in time to have enabled the Washington's crew to have avoided the collision; and have you or not any doubt about this?

Ans. I have no doubt that if the man on the look-out had sound eyes, he would have seen the Mary Frances in time for the Washington to clear us.

35. Please state whether or not you heard any thing said on board the Washington, by her officers and crew, relative to their having or not having a good look-out on the day or morning of the collision; if yea, what was said, when and by whom was it said?

Ans. (Mr. Soheir objects.) The crew told me, I can't say which, when I first jumped on board, that their watch was all aft at the pumps.

36. Whether or not was there a good look-out kept on board the Mary Frances on the morning of the collision.

Ans. There was; there were three men forward all looking out, besides the second mate aft, who is supposed to be on the look-out.

37. Was or was not there any thing that could have been done by the crew of the Mary Frances to prevent the collision; if yea, what was it; why was it not done?

Ans. Nothing could have been done.

38. Was or was not the Mary Frances hailed from the Washington prior to the collision?

Ans. She was not.

39. Whether or not there was any thing done on board the Washington, indicating that the crew of the Washington saw the Mary Francis before the collision.

Ans. No, sir, nothing.

40. If nothing had been done on board the Mary Frances, would or would not a collision have occurred, and would or would not the Mary Frances have gone ahead far enough to clear the Washington?

Ans. If nothing had been done on board the Mary Frances I think the collision would have occurred, and we could not have cleared her in my judgment.

41. If the Washington had put her helm up when hailed, would or would not the putting of the Mary Francis's helm down have aided to keep the ships apart?

Ans. Yes, sir.

42. What was the tonnage of the Mary Frances and the Washington?

Ans. The Mary Frances was three hundred and twenty-six, and I should think the Washington between four and five hundred.

Interrogatories by William Soheir, esq., counsel for respondents.

1. How old was the Mary Frances; what requisites are, in your opinion, essential to constitute seaworthiness in a vessel; what examination

Ans. The crew were taken from the wreck of the Mary Frances to the Washington about eight o'clock; the Mary Frances was then abandoned in a sinking condition, and at the last time I saw her she was going before the wind, and sunk down so that the water was three feet over the forecastle deck.

25. In what part of the vessel were you when you first saw the Washington; did you see her plainly and distinctly, or how otherwise?

Ans. I was forward of the windlass, and first saw her dimly, but she was going rapidly, and I soon saw her plain.

26. Was there or not any reason why the Mary Frances could not be seen as soon and as clearly from the Washington, as the Washington was seen from the Mary Frances; if yea, what was it?

Ans. There was no reason why she couldn't.

27. Whether or not any of the crew or officers of the Mary Frances went on board the Washington immediately after the ships struck; if yea, which of them?

Ans. All but two or three went on board the Washington; the captain came up out of the cabin without his clothes, and jumped on board the Washington, and we followed; then we thought both ships were sinking, and had rather sink in our own, and we returned to her.

28. What tacks had the Washington on board when she struck the Mary Frances; had or had not any change been made in her course since she came in sight?

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29. When you first saw the Washington, could you or not see which way she was steering, and on what tack she was standing; if not, how soon could you?

Ans. When we first saw [her] we couldn't; she was rather dim; but soon we could see how she steered, and on what tack she was—in a few minutes after we first saw her.

30. Whether or not there was room and time enough, after the Washington was hailed, for the Washington to have kept clear of the Mary Frances, or how otherwise.

Ans. There was I think plenty of time and room for the Washington to clear us; if she had kept off when first hailed, I think she would have cleared us by three ship's length.

31. Was it or not dark, and how dark, when the Washington was seen; was there any moon?

Ans. It was pretty dark; not so very dark, it was a little hazy; there was no moon, I believe.

32. Did or did not the Washington or Mary Frances carry any lights; if yea, where?

Ans. No, sir.

33. Have you or not any reason to believe that the Mary Frances was not seen from the Washington, as soon as the Washington was seen from the Mary Frances? If yea, please state such reason as fully as you can.

Ans. I think so, because the Washington did not alter her course.

34. Whether or not, if a good look-out had been kept on board the Washington, must the Mary Frances have been seen in time to have enabled the Washington's crew to have avoided the collision; and have you or not any doubt about this?

Ans. I have no doubt that if the man on the look-out had sound eyes, he would have seen the Mary Frances in time for the Washington to clear us.

35. Please state whether or not you heard any thing said on board the Washington, by her officers and crew, relative to their having or not having a good look-out on the day or morning of the collision; if yea, what was said, when and by whom was it said?

Ans. (Mr. Soheir objects.) The crew told me, I can't say which, when I first jumped on board, that their watch was all aft at the pumps.

36. Whether or not was there a good look-out kept on board the Mary Frances on the morning of the collision.

Ans. There was; there were three men forward all looking out, besides the second mate aft, who is supposed to be on the look-out.

37. Was or was not there any thing that could have been done by the crew of the Mary Frances to prevent the collision; if yea, what was it; why was it not done?

Ans. Nothing could have been done.

38. Was or was not the Mary Frances hailed from the Washington prior to the collision?

Ans. She was not.

39. Whether or not there was any thing done on board the Washington, indicating that the crew of the Washington saw the Mary Francis before the collision.

Ans. No, sir, nothing.

40. If nothing had been done on board the Mary Frances, would or would not a collision have occurred, and would or would not the Mary Frances have gone ahead far enough to clear the Washington?

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41. If the Washington had put her helm up when hailed, would or would not the putting of the Mary Francis's helm down have aided to keep the ships apart?

Ans. Yes, sir.

42. What was the tonnage of the Mary Frances and the Washington?

Ans. The Mary Frances was three hundred and twenty-six, and I should think the Washington between four and five hundred.

Interrogatories by William Soheir, esq., counsel for respondents.

1. How old was the Mary Frances; what requisites are, in your opinion, essential to constitute seaworthiness in a vessel; what examination

of the Mary Frances have you made to ascertain whether she possessed those requisites?

Answer. I don't know, but I think she was about seven; and I think I heard some people say so. I think a vessel seaworthy when she don't leak, and has good sails and rigging. I never examined her timbers, but I tried the pumps; and I examined her rigging and sails, and all were good.

2. How many ship's length had you run into the wind, after the helm of the Mary Frances was put down, before the collision took place?

Ans. I couldn't tell, for I didn't know what time the helm was put down.

3. How many minutes after you first saw the Washington was the helm of the Mary Francis put down?

Ans. I can't tell.

4. Was not the wind on the beam of the Mary Frances when the Washington was first seen?

Ans. The wind was on the weather bow, and a whole sail breeze.

5. How many points from the wind was the Mary Francis steering by compass, when the Washington was first seen?

Ans. She was on the wind, and to within six points of it. I know she was so steering, because the wind was [a]head, and we were beating, and I could see it by the yards.

6. Do you mean to be understood to say, that when you could just see the Washington clearly enough to distinguish which way she was going, that you were satisfied, from the course adopted by the Washington, that she was holding on and keeping her course, without intention to alter it?

Ans. Yes, sir.

7. Did not those on board the Mary Frances then know, that if the Washington kept on her course, as you say you knew she intended to, the Washington would come in contact with the Mary Frances?

Ans. Yes, sir; and that is the reason we hailed her.

8. Do you mean to say that if, when you first saw the Washington, your only object had been to keep clear of her, it would have been absolutely impossible to have taken any course that would have effected that object?

Ans. We could not have done any thing that would have cleared her; we did all we could.

9. Is the opinion you express in your last answer based upon the relative situation of the two vessels when you discovered the Washington, and the rate that each vessel was sailing?

Ans. If we had put the helm up, she would have struck us on the stern, or the other side of us; I consider the distance and rates, the wind.

10. If you say you were confident when you first saw the Washington that the Mary Francis could take no course to prevent the collision, why did you run the Mary Francis into the wind?

Ans. To keep clear of her as much as possible; it was the only course we could take; had we worn, she would have come *stern* on to our starboard side.

11. Did not your thus running into the wind have a tendency to bring the Mary Francis across the hawse of the Washington?

Ans. No, sir.

12. At what rate was the Mary Francis sailing?

Ans. With a whole sail breeze, but the sails were shaking; perhaps five knots [and a] half an hour, with her sails full.

13. Was not the Washington a larger vessel than the Mary Francis; how much larger was she?

Ans. She was larger by a hundred tons or more.

14. Was not the Washington higher in the water than the Mary Francis?

Ans. Yes, sir; and lighter.

15. How many minutes after the Washington was first seen did you hail the Washington to put her helm up?

Ans. It is difficult for me to tell now; and a man is apt to think it a great many minutes in such a time; I should think it seven or eight minutes; but I guess at it.

16. Was it not hazy weather on the morning of the collision?

Ans. Yes, sir; some hazy, but not foggy.

17. Upon what parts of the Mary Francis was the look-out placed when you first saw the Washington; upon what side of the deck?

Ans. *I* was the starboard side, on the weather side, forward the windlass.

18. Do you not think that considering the difference in size between the Washington and the Mary Francis, the Washington could have been seen by a third person at a greater distance than the Mary Francis, other things being equal?

Ans. I don't think the difference in size would make much odds at sea.

19. What makes you think that in fact the Mary Francis might have been seen by the Washington at as great a distance as the Washington was seen by the Mary Francis?

Ans. Because the sail was about alike in both, and they made the same show; and any ship should have been seen at that distance.

20. What was the length of the Mary Francis?

Ans. I don't know; but I should think one hundred and twenty-five or so.

21. Could the Washington have avoided the Mary Francis by any other course than by putting her helm up.

Ans. I don't think she could; she wouldn't have had time to go about.

22. Was not the Mary Francis loaded with ice?

Ans. She had ice for her cargo; whether it was full or not I can't say.

23. Could the Mary Francis, with such a cargo, have sunk?

Ans. I don't think she would go to bottom; but she would above her decks, and the water was nearly up to the bulwarks when we lost sight of her; then she rolled her bulwarks under.

Additional interrogatories by Mr. Pope.

1. Would it or would it not, have been, in your opinion, possible to have brought the Mary Francis into port after the collision?

Ans. No, sir.

CHRISTIAN BENNETT.

U. S. A., *District of Massachusetts.*

This eighteenth day of February, A. D. 1848, personally appeared before me the above named deponent, who being sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which his deposition was taken, was examined by the parties hereinafter named, and his answers thereto written down by me in his presence; after being carefully read over to him by me, were by him subscribed in my presence as and for his deposition. Taken at the request of the respondents for the ship Washington, to be used in a libel pending between J. P. Wheeler, libellant, and the ship Washington, before the district court of the United States for the district of Massachusetts, holden at Boston, in and for the said district, and said adverse party attended, and said deponent being bound on a voyage to sea is the cause for taking this deposition.

EDWARD G. LORING, *Com.*

Deposition of Frederick Peterson.

I, Frederick Peterson, of Copenhagen, of lawful age to testify on oath, depose and say, in answer to interrogatories by Mr. Pope, for the libellants:

1. What is your age and occupation; and how long have you followed that occupation?

Answer. I am twenty years old and a seaman; I have followed the seas seven years.

2. Were you or not employed on board the ship Mary Francis on her late attempted voyage from Boston to New Orleans; if yea, in what capacity; when did the Mary Francis sail; and who was the master of her, and who were her mates?

Answer. I was seaman on board the Mary Francis on said voyage; Captain Crosby was master; the first mate's name was Brown, and the second mate's name was White.

3. How long did you proceed on your voyage; how and when was said voyage terminated; what became of the ship Mary Francis, her cargo, and her crew? State particularly and fully what happened to the Mary Francis.

Answer. About four or five days out the Mary Francis was run into

by the Washington; this happened about half past three in the morning; it was dark and hazy; I was walking the deck, it being my watch on deck; Bennett first cried out, and we all saw her and went down to leeward; she was a quarter of a mile off when we first saw her; we luffed our vessel up in the wind as soon as we saw her; the second mate, who had charge of the watch, gave the order; Bennett hail'd the Washington to keep her off, but she did not, neither did she answer the hail; nor did she change her course, so far as we could see; she struck us in the after part of the fore rigging with her *stern*, and swept down to our main rigging; she cut the hull and smashed the beams through so as to start the planks on the other side, and carried away our fore topmast and yards, &c. The captain came up from his bed and went right on board the Washington; the crew, except the first mate and one man who staid on board, followed the captain; after that, in a few minutes the captain returned to the Mary Francis, and two or three of the crew with him, and I among them; the pumps were sounded and water was found so that she couldn't float, and she kept sinking till about eight o'clock in the morning; then the boats came and took us off to the Washington; I was in the last boat with the captain, and then the water was two feet over the forecastle deck or floor, and it was gaining on her all the time, and when I last saw her she was so low in the water that her bulwarks were just above water; after the collision nothing could have been done to keep her afloat and get her into port; before that she was staunch, and tight, and well found in sails *in* rigging; she had a new mainsail; when I saw the Washington she was a little on the larboard side and ahead of us, and she had the wind about three points free, with her larboard tacks aboard; the Mary Francis had her starboard tacks aboard; if the Washington had kept off as soon as we sung out, she would have cleared the Mary Francis; and I don't see that the Mary Francis could have done any thing more than she did to avoid the collision.

Cross interrogatories by Wm. Soheir, esq.

1. How many minutes before the collision took place did you see the Washington?

Answer. I didn't look at any watch; it was five or six minutes; I can't tell.

2. Could you then make her out so as to ascertain clearly her course and distance from you?

Answer. Yes, sir; we could see her not very plain, but we could see her, and that she was coming right to us.

3. Did you see the Washington as soon, or how long after she was first seen by Christian Bennett?

Answer. At the same time.

4. At what rate was the Mary Francis sailing when she first luffed up into the wind?

Answer. About six or seven knots; before luffing we had a good smart breeze.

5. What way was the Washington steering by compass when you first saw her; how was the wind by compass?

Answer. I don't know.

6. How many points of the wind was the Mary Francis steering before she luffed?

Answer. We had the wind ahead and were close to the wind, say six or seven points.

7. Do you mean to be understood to say that, when you first saw the Washington, it would have been absolutely [impossible] for the Mary Francis to have kept out of her way if the efforts of those on board the Mary Francis had been directed solely to that?

Answer. We couldn't have done more than we did; it couldn't have been avoided on our side.

8. How do you know the Washington had the wind free when you first saw her?

Answer. Because I could see she was going her course, and her yards not braced sharp.

9. Could the Washington have taken any other course to avoid the collision than that adopted by her, by putting her helm up?

Answer. She didn't do any thing; she could have done nothing but put her helm up when we sung out.

10. How far had the Mary Francis proceeded after she was luffed up; did not luffing up have a tendency to run the Mary Francis athwart the hawse of the Washington?

Answer. I can't say how far she had gone after luffing, perhaps six lengths; when the Mary Francis luffed it threw her from the Washington, and didn't bring her across the hawse of the Washington, nor have the effect to.

11. How many persons were on the deck of the Mary Francis when the Washington was first seen; who were they; where are they now; in what part of the Mary Francis was the look-out placed?

Answer. I and Smith were walking the deck forward on the weather side; he has gone to New Orleans; Bennett was before the windlass on the look; there was nobody else forward. Mr. White, the second mate, was about midships; Peter Miller, who is dead, was at the helm, and that was all the watch.

12. Could not the Mary Francis have avoided the Washington by putting her helm up when the Washington was first seen? Why not?

Answer. No, sir. By the time we had got round the Washington would have been right into us.

13. Do you feel sure that the vessels were a quarter of a mile apart when the Washington was first seen?

Answer. I guess there was much as that, as far as I could see at night.

14. How far was the Washington when you hailed her?

Answer. I didn't hail her; Bennett did.

15. By a trumpet?
Answer. No, sir.

Additional interrogatories by Mr. Pope.

1. Whether or not you heard any thing said on board the Washington by her officers or crew in relation to their having or not having heard the hailing from the Mary Francis, or as to their having or not having a look-out on board the Washington on the day of the collision; who said it, and what was said? State particularly all you heard, and when.

Answer. (Mr. Soheir objects.) The man at the wheel, as he said he was, told me that he heard somebody hail, and supposed they were the passengers The man who said he was on the look-out told me that at the time the vessel struck, he was looking after a marlin-spike to fix the pump with, about the decks.

FREDERICK PETERSON.

District of Massachusetts, U. S. A.

This twenty-second day of February, 1848, personally appeared before me, the above named deponent, who after being sworn to speak the truth, the whole truth, and nothing but the truth in relation to the cause for which his deposition was taken, was examined by the parties hereinafter named on written interrogatories, which with his answers thereto written down by me in his presence, after being carefully read over to him by me, were by him subscribed in my presence as and for his deposition, taken at the request of the respondents, to be used in a libel pending between J. P. Wheeler, libellant, and the ship Washington, before the district court of the United States, for the district of Massachusetts, holden at Boston, in and for said district, and said adverse party attended, and said deponent being bound on a voyage to sea is the cause of taking this deposition.

EDW. G. LORING,
Commissioner.

The deposition of Niels P. Schibye.

I, Niels P. Schibye, of Denmark, of lawful age to testify, on oath depose and say, in answer to interrogatories by Mr. Pope, counsel for the libellants.

1. Please state your age and occupation; how long you have been engaged in such occupation, and where you belong when at home.

Answer. I am twenty-eight years of age, and a seaman, and I have been a seaman for thirteen years and an half.

2. What voyage were you last employed upon, and on board of what ship, and in what capacity; what cargo had you on board, and what terminated said voyage? State as particularly as you can.

Answer. I was chief mate of the Mary Francis on a voyage from Boston to New Orleans with a cargo of ice; on the 11th December,

about one hundred and twenty miles from Cape Cod, at about three o'clock, a. m., we were run into by the ship Washington; I was asleep in my berth being my watch below, and I was waked up by the ships' collision and the cracking of planks, &c. I run on deck and found the Mary Francis much injured. She was cut to the water's edge, and her whole deck was started, and the butts on the starboard side were started, and the Washington was all entangled in our rigging. I could do nothing to clear the ships, but the Washington backed her sails and filled away, and got clear. I remained on board the Mary Francis as long as was possible, and left her about nine in the morning, and went on board the Washington; the Mary Francis was a perfect wreck. She was full of water, and rolling so heavily that we expected every minute to see her turn over.

3. Was or was not the Mary Francis tight, staunch, and seaworthy when she left Boston; how many men had she; was she or not victualled and equipped well for her intended voyage?

Answer. She was staunch and seaworthy when she left Boston; had eight men before the mast; was well victualled and equipped for her voyage.

4. Please state what was the state of the weather at the time of the collision; whether or not the night was dark; and if yea, how dark?

Answer. It was hazy weather; the stars I believe were not to be seen because of the haze, but I am not certain; it was not a dark night, nor a very dark night.

5. Please state whether or not there was, in your opinion, any reason to prevent the crew of the Washington from seeing the Mary Francis as far off as the crew of the Mary Francis could see the Washington.

Answer. No.

6. Please state whether or not you have any reason to believe the Mary Francis was not seen by the Washington's officers and crews as soon as the Washington was seen by the Mary Francis' crew. If yea, what are those reasons?

Answer. The second mate of the Washington told me that they were engaged by the pumps. (Mr. Soheir objects to the answer.)

7. What was the tonnage of the two ships, and whether or not the size of the Washington would render her visible at sea any greater distance than the Mary Francis, and how much greater?

Answer. The Washington was the largest, but the difference of size would make no difference in their being seen.

8. Please state whether or not the Mary Francis was or not deeper laden than the Washington, and whether that would or would not make [make] any difference as to her being seen sooner or later than the other ship?

Answer. I think the Mary Francis was the deepest laden, but that would make no difference as to her being seen.

9. Please state whether or not there was any thing to prevent the crew of either ship from seeing to a sufficient distance, on that night, to

have enabled the crew of the ships to have kept them clear of each other.

Answer. Not at the time I came on deck; though it was then hazy; how it was before, I can't say.

10. How far off, in your judgment, could a good look-out on board your ship have seen the Washington in that night, and how far off could a good look-out on board the Washington have seen the Mary Francis?

Answer. I think either ship could have seen the other about two hundred yards off, and both the same distance.

11. How many yards or ship's lengths of your ship off, would it have been necessary, in your opinion, for the Mary Francis to have been seen by the Washington to have enabled her crew to have kept clear of the Mary Francis?

Answer. About a hundred yards.

12. How many minutes before the collision would it have been, in your opinion, necessary for the crew of the Washington to have seen your ship, to have given them ample time to have kept her clear of your ship?

Answer. Seven or eight minutes.

13. Was there or not any material difference in the haze round your ship to windward or to leeward, when you came on deck?

Answer. I did not take notice.

14. Please state whether or not you kept the log book of the Mary Francis, and if you have the same, please hand it to the magistrate, to be by him marked and identified.

Answer. I kept it, and hand it to the magistrate, and it is marked by him Z. E. G. L.

Cross interrogatories by Mr. Soheir, counsel for the respondents.

1. How long a time after the collision happened did you come on deck, and what did you first do?

Answer. I was on deck in two minutes, and my first act was to see to the condition of our ship.

2. How long a time did you then spend in the examination of the weather?

Answer. I didn't take any particular notice of the weather.

3. Do you then feel sure that the Mary Francis could be seen two hundred feet from the Washington?

Answer. Yes, sir; because the weather was so that you could see that distance.

4. Will not the size of an object make some difference in its appearance at night, and will not the distance at which it can be seen depend in any, and what, degree upon its size?

Ans. Yes; size will make a difference, [but the difference between these vessels was so little as to make no difference in their being seen.] Mr. Sohier objects to all in brackets.

5. Please to state whether there is any such difference in size between vessels as to render one visible at a greater distance than the other, and what. In your answer make no reference to the relative size of the Washington and Mary Francis.

Ans. Yes, sir; because there may be a boat and a large ship.

6. Could not, then, the Washington, if a larger ship, be seen at a greater distance than the Mary Francis, other things being equal?

Ans. No; because the difference is so little.

7. Then the distance, at which these vessels are relatively visible, does not depend upon their respective size; is it not so?

Ans. Yes, sir.

8. If the Mary Francis had seen the Washington a quarter of a mile off, could she have avoided the collision had she endeavored to; what is the shortest distance within which she would have been able to clear the Washington?

Ans. I don't think she could have cleared her at a quarter of a mile, nor can I say the shortest distance; it depends on how the Washington was, and I don't know that.

9. If the Mary Francis being on a wind on the starboard tack, and the Washington on the wind on the larboard tack, and the former bearing at 3½ points on the lee bow of the latter, do you think, taking the circumstances of the case into consideration, and supposing them to be approaching each other at the rate of eleven miles an hour, that she could have avoided the collision, if the former had been seen but a quarter of a mile off.

Ans. No, sir.

NIELS P. SCHIBYL.

U. S. A., DISTRICT OF MASSACHUSETTS.

This twenty-first day of February, A. D. 1848, personally appeared before me the above named deponent, who, after being sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which his deposition was taken, was examined by the parties hereinafter named on written interrogatories, which, with his answers thereto written down by me in his presence, were by him subscribed in my presence, as and for his deposition, taken at the request of or for the respondents, to be used in a libel pending between the ship Washington and J. P. Wheeler, before the district court of the United States, holden at Boston, in and for the said district, and said adverse party was present, and said deponent being bound on a voyage to sea is the cause of taking this deposition.

EDW'D G. LORING, *Com'r.*

The deposition of William R. Benson.

I, William R. Benson, of Portsmouth, in the State of Virginia, master mariner, of lawful age to testify on oath, depose and say:

In answer to interrogatories by Wm. Soheir, esq., counsel for the respondents—

1. Please state your age and occupation, and how long have you followed the seas.

Ans. I am forty-seven years of age, and have followed the seas thirty years.

2. Were you or not employed on board the ship Washington on the 11th December last? If so, state in what capacity, and where that ship was, latitude and longitude,) and the voyage she was then pursuing.

Ans. I was master of said ship at said time; the latitude, as near as I recollect, was 41 north; the longitude about 69; she was bound from Liverpool to Virginia by the way of New York, and was then about sixty miles from Nantucket.

3. Who were the owners of said ship; what is her tonnage length; with what cargo was she loaded; what was the number of her crew; who was your second mate; who composed his watch?

Ans. L. E. Steenback and Mrs. Caroline McFarland were owners; the tonnage is 503; 130 feet length; the cargo was salt and emigrants and a few packages of dry goods; Henry Young was the second mate; John Simmons, Edward McCoy, James Johnson, William Reed, John Edgecombe, and an Irish stranger.

4. Please to state whether or not a collision happened on the morning of the eleventh December between said ship Washington and the Mary Francis. If so, please state what was the wind and weather at the time; who was on deck in the Washington; on what tack; how near the wind, and at what rate she was sailing, and how steering.

Ans. A collision did take place between those vessels at about half past 3 a. m.; I was in my berth, and heard the cry of the man forward to hard up the helm; I ran on deck, and before I got there the collision took place, and, when I reached the deck, they were together; the wind was about south southwest, and I should call the weather thick and hazy; the second mate and his watch, named above, were on deck, and we were on the larboard tack about six points, full and by as near as we could go to the wind, and going about five and a half knots, heading between west and west by north by compass.

5. How was the Mary Francis heading; what was her size and length; what were the relative positions of both vessels when you first saw them?

Ans. The Mary Francis must have been heading about southeast, on the starboard tack, previous to the collision; her size and length I can't state; I should say she was from 150 to 200 tons smaller than the Washington; she was across our bows, and our bowsprit across her deck about the main hatch, when I first saw her.

6. State whether or not, in your opinion, any thing, and what, could have been done by the Washington to avoid the collision.

Ans. I don't think anything more could have been done than was done if I had been on deck myself.

7. How far, in your opinion, could the Mary Francis have been

seen from the Washington, on the tack in which she was sailing, previous to the collision and the time it took place; and what are your reasons for this opinion? Please state them fully.

Ans. I should think four times the length of the ship; I don't think the weather was too thick to prevent me seeing that distance; the reason we could see her no further was the thickness of the weather.

8. How far should you think that a hail from the Mary Francis could have been heard on board of the Washington at the time of the collision?

Ans. As she was to leeward, I should judge twice the ship's length.

9. How many minutes would it have taken to put the Washington before the wind, or so far before the wind as to have enabled her to avoid the collision?

Ans. Five minutes to get her before the wind completely, and not more than half the time to avoid the collision.

10. Please to state whether or not a man, standing on the weather side of the Washington, and near the fore hatch, or abaft the windlass, was *was* not in a position from which the Mary Francis, on a clear day, could have been seen at a sufficient distance to enable the Washington to have avoided the collision.

Objected to by Mr. Pope.

Ans. Yes, sir.

11. Where should a look-out have been kept on board the Washington at the time of the collision, taking into consideration all the circumstances under which it happened?

Ans. Abaft the windlass, on the weather side; from that position a man could see two-thirds round the horizon, and under the foresail to leeward. The foresail was ten feet from the deck.

12. Please to state what look-out was usually kept on board the Washington at night on said voyage. To how many men is that duty assigned?

Ans. The look-out was always two men at a time, relieved about every hour.

13. How often was the Washington pumped during said voyage; how many men were usually employed to man her pumps?

Ans. The orders were to try the pumps every four hours; very seldom less than three men were employed at the same time.

14. How many of the watch during the night were employed at the Washington's pumps in said voyage; could this be done safely, and is such course usually observed in vessels at sea?

Objected to by Mr. Pope.

Ans. All but those on the look-out and the man at the helm come when pump ship is called. One man would be always left on the look-out; this is safe and usual.

15. Was it or not prudent and proper to leave but one man at the look-out when the others are called to the pumps? State your reasons for this opinion.

Ans. I should think one would be sufficient, and it required the other to man the pumps; to pump was necessary.

16. Please to state particularly whether any and what damage was done to the Washington by the collision; has she been repaired, and at what cost?

Ans. It carried away our bowsprit, both jibbooms, figure-head, and cutwater, and all the sails and rigging attached, the larboard side of the ship was very much chafed; she was repaired, and, I think, at an expense of about five thousand dollars—I mean the consequential damages and all.

17. What was done to the Mary Francis, and what became of her; if loaded with ice would she have sunk?

Ans. She was abandoned, and was low in the water when we last saw her. If loaded with ice she would not have sunk.

18. Did you or not, at the time of the collision hear any persons, and whom, of those on board the Mary Francis, say any thing, and what, of the length of time during which they had seen the Washington before the collision; if so, what was said, and who said it?

Ans. The captain told me, and I think the second mate, that some of their men had seen us half an hour.

Cross interrogatories by Mr. Pope, counsel for the libellants.

1. How many yards off must the crew of the Washington have been aware of the presence of the Mary Francis to have been able to get the Washington before the wind so as to have avoided the collision, the Mary Francis having been brought close into the wind?

Ans. About a hundred and thirty yards.

2. When you say, in your answer to the sixth direct interrogatory, that you don't think any thing could have been done, do you not mean that after the cry of "hard up the helm" was heard, it was too late to keep the Washington off?

Ans. Yes, sir.

3. What is the length of the ship Washington from stem to stern?

Ans. I never measured her. The register calls her one hundred and thirty feet, and I should think it correct.

4. Was not the Mary Francis a wreck, and not seaworthy, after the collision?

Ans. That I can't tell; but I think she was not seaworthy.

5. Was she not properly abandoned by her officers and crew?

Ans. I should judge she was.

6. When were you last on deck on the night before the collision?

Ans. At a quarter past one that morning.

7. How dark a night was it then?

Ans. It was thick and hazy, as it was at the time of the collision.

8. Was not the night still, the wind moderate, and the sea smooth?

Ans. It was what we call a moderate or whole sail breeze, but the sea was considerably rough.

9. Could not your crew have seen as far towards the Mary Francis as those of the Mary Francis could towards you on that night?

Ans. No, sir; because you can always see further to windward than to leeward.

10. Was there any thing that night in the state of the weather to prevent hailing from the Mary Francis being heard at the usual distance?

Ans. Only because our ship was to windward.

11. Should not the whole watch on deck be on the look-out in a dark night?

Ans. No, sir; not when they are required at the pumps.

12. Should there not be a man on each bow, at least, on the look-out in a night that can be considered dark?

Ans. Generally there should be; at that night and at that time, on board the Washington, there should not have been, as the other man was engaged.

13. State whether, in a dark night, you do not place more than one man on the look-out.

Ans. Yes, sir; always one on each side.

14. Was not the hailing of the ship almost immediately after you heard "hard up" sung out?

Ans. Yes, sir; instantaneously.

15. Who sung out "hard up," when you first heard it?

Answer. The noise came from forward first, and I immediately heard the man at the helm answer. Who spoke it forward I could not tell.

16. Why could not your crew see as far towards the Mary Francis as the crew of the Mary Francis towards you on that night?

Answer. Because it was and always is thicker to leeward than to windward.

17. How far could the Washington's crew have hailed the Mary Francis?

Answer. Perhaps three or four times the length of the ship to have made them hear.

18. Could not the Mary Francis have hailed your ship at good hailing distance that night?

Answer. She could not have been heard.

19. How long were you in getting on deck after you heard the order to put the helm "hard up?"

Answer. I think not half a minute.

20. What distance could the Washington have been hailed from the Mary Francis on that night?

Answer. Four times our length, or a ship's length more than she could have been heard by us.

21. Did you come on deck as soon as you heard "hard up" sung out?

Answer. Yes, sir, without my clothes on.

22. Were you awake or asleep just before "hard up your helm" was heard by you?

Answer. I think the order woke me.

23. How many yards could the Washington have sailed after you heard "hard up the helm" before she hit the Washington?

Answer. I think not twenty.

24. How many yards off was it necessary for the Mary Francis to hail you that night to have prevented the collision; how far off could they hail you?

Answer. It would have taken the eighth of a mile to have prevented the collision, and they could not have hailed us further than about a hundred and twenty yards to be heard.

25. Could you not hail a ship to leeward more than eighty yards?

Answer. I think not to be heard distinctly.

26. Was there any haze or fog between your ship and the Mary Francis?

Answer. Yes, sir.

27. Was there any fog or haze to windward of your ship?

Answer. Yes, sir, but not so dense.

28. Was there any fog or haze to leeward of your ship?

Answer. Yes, sir.

29. Could not a man on the look-out see more than fifty or sixty yards?

Answer. I think a man might have seen a hundred yards to leeward.

30. Do you swear the night was dark when *when* the collision occurred? How dark was it then?

Answer. It was as dark as nights generally are with no moon, and a scud or haze, and the stars appearing occasionally.

31. Don't you think the Mary Francis could have been seen quicker if your second mate had had more men on the look-out on that night?

Answer. No, sir.

32. Was not the Mary Francis less than fifty or sixty yards off when you heard hard up your helm; how near was she?

Answer. She must have been less in my judgment, but being below I could not tell, nor how far off she was.

33. Was the night of the collision so dark that you took any extra exertion or care to have a good look-out kept?

Answer. When I left the deck at a quarter past one o'clock, I told the officer to mind, as it was hazy, and keep a good look-out, and to call me at 4 o'clock.

34. Would not the noise of your passengers, &c., been likely to prevent the hearing of the hailing from the Mary Francis on the night of the collision?

Answer. I should judge it would.

35. How near in yards or feet could the two ships have come together, and the collision have been avoided on that night, if the crew of each ship had seen the other ship?

Answer. I think an eighth of a mile would have been required, and that the ships could not have seen each other at that distance.

36. How many minutes must have been required on that night to

keep the ships clear of each other, if the crews of each ship had seen the other ship?

Answer. An eighth of a mile.

37. When you say that the officers of the Mary Francis told you their men had seen the Washington for half an hour, are you sure it was not a quarter of an hour; when did they say so; are you positive as to precisely what was said, or who said it; can you swear positively that the second mate of the Mary Francis told you so?

Answer. I am positive I heard it from the captain and second mate of the Mary Francis, and that it was half an hour. I think it was the morning they came on board, and I have stated precisely what was said, and who said it; and I can swear the second mate of the Mary Francis told me so.

38. Are you not acting here as agent of the owners; have you not heard all the testimony of the witnesses in this case?

Answer. I am acting I presume as agent of the owners and underwriters both; I have heard the testimony for the respondents, or the greater part of it.

Additional interrogatories by Mr. Sohier.

1. Please to exhibit the log of the Washington, and please to state whether the said ship is insured.

Answer. The log is exhibited and marked H, E, G, L, by the commissioner; the entries in it were made by Robert Taylor, my mate; the Washington was not insured that I know of; I never saw the policy.

W. R. BENSON.

U. S. A, *district of Massachusetts.*

This twenty-third day of February, A. D. 1848, personally appeared before me the above named deponent, who being sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which his deposition was taken, was examined by the parties hereinafter named on written interrogatories, which with his answers thereto written down by me in his presence, after being carefully read over to him by me, were by me subscribed in my presence, as and for his deposition, taken at the request of J. P. Wheeler, libellant, to be used in a libel pending him and the ship Washington, before the district court of the United States, for the district of Massachusetts, holden at Boston, in and for said district, and said adverse party attended, and said deponent being bound on a voyage to sea is the cause of taking this deposition.

EDWD. G. LORING,
Commissioner.

The deposition of Edward McCoey.

I, Edward McCoey, of Armagh, in Ireland, of lawful age to testify,

in answer to interrogatories by William Sohier, esq., counsel for respondents.

1. State your age, occupation, the length of time you have been engaged in said occupation.

Answer. I am twenty-three years of age; I am a mariner, and have been seven or eight years.

2. Please to state, whether or not on the 11th of December last, you were engaged on board the ship Washington, and in what capacity.

Answer. Yes, sir, as foremast hand.

3. Please to state the size of the Washington, her officers, and the number of her crew; and also her cargo.

Answer. I cannot say what the tonnage, or length of the Washington was; William R. Benson was master, Mr. Taylor was mate, and Mr. Young was second mate; the crew beside was twelve men, two boys, and cook, and steward; our cargo was salt, and 170 steerage passengers.

4. State whether or not a collision took place at any and what time in the morning of said December 11th, between the Washington and the ship Mary Francis; if so, state particularly how, when, and where the same occurred; the tack on which the Washington was then sailing, and what course by compass, when the Mary Francis was first seen, what watch was then on deck, and in what were they engaged, what you were doing at the time, what was the weather, the course taken by you, and by the Mary Francis, and all the circumstances attending the collision.

Answer. A collision took place between the Washington and Mary Francis on the eleventh of December, about half past three o'clock, a. m. I was at the wheel, it was off this coast; we were on soundings after it on that day; the Washington was on the larboard tack; the Washington headed about west, full and by, as close as she could lay to the wind; the wind was about south southwest; I heard a man sing out "put the helm hard up, there is a ship into us"; I put the helm hard up as quick as possible, and then the ship was right into us, or we were right into her; when the Mary Francis was first seen the second mate's watch was on deck; Mr. Young, Simmons, myself, Edgecomb, and Reed, and another man whose name I don't know; I was at the wheel, and don't know where the rest were; the weather was clear over head, and dark in the horizon, it was hazy and dark, hazy to leeward; the first of the Mary Francis I saw was when we struck, she being across our bows; the Washington had all sail except the main royal, and the Mary Francis all sail but the main royal and flying jib; the Washington had every thing carried away forward, down to the stern, bowsprit, gibboom, and the sails on them; and the Mary Francis came alongside and carried away some of our chain and scraped the timbers; I don't know what damage was done to the Mary Francis.

5. State whether or not the Washington, during her passage, was pumped, and how often and by whom; was this or not necessary?

keep the ships clear of each other, if the crews of each ship had seen the other ship?

Answer. An eighth of a mile.

37. When you say that the officers of the Mary Francis told you their men had seen the Washington for half an hour, are you sure it was not a quarter of an hour; when did they say so; are you positive as to precisely what was said, or who said it; can you swear positively that the second mate of the Mary Francis told you so?

Answer. I am positive I heard it from the captain and second mate of the Mary Francis, and that it was half an hour. I think it was the morning they came on board, and I have stated precisely what was said, and who said it; and I can swear the second mate of the Mary Francis told me so.

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2. Please to state, whether or not on the 11th of December last, you were engaged on board the ship Washington, and in what capacity.

Answer. Yes, sir, as foremast hand.

3. Please to state the size of the Washington, her officers, and the number of her crew; and also her cargo.

Answer. I cannot say what the tonnage, or length of the Washington was; William R. Benson was master, Mr. Taylor was mate, and Mr. Young was second mate; the crew beside was twelve men, two boys, and cook, and steward; our cargo was salt, and 170 steerage passengers.

4. State whether or not a collision took place at any and what time in the morning of said December 11th, between the Washington and the ship Mary Francis; if so, state particularly how, when, and where the same occurred; the tack on which the Washington was then sailing, and what course by compass, when the Mary Francis was first seen, what watch was then on deck, and in what were they engaged, what you were doing at the time, what was the weather, the course taken by you, and by the Mary Francis, and all the circumstances attending the collision.

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5. State whether or not the Washington, during her passage, was pumped, and how often and by whom; was this or not necessary?

Ans. The pumpers went to the pumps at seven bells, or every three hours and a half; every watch pumped her out, before they went below, generally in half an hour, sometimes longer.

6. State whether or not any course could have been adopted by the Washington to avoid collision, other than that she pursued.

Ans. Nothing that I know of, sir; I had scarcely time to do what I was told.

7. State whether or not, in your opinion, considering the state of the weather at the time of the collision, the Mary Francis could have been seen by the Washington at a distance sufficient to enable the latter to keep clear of the Mary Francis.

Ans No, sir, I think not.

8. Could or not the Washington, in your opinion, have been seen from the Mary Francis at a greater distance than the Mary Francis from the Washington; why; what was the relative size of the two vessels?

Ans. I believe the Washington could have been seen further from the Mary Frances than she could have been seen from the Washington, because the Washington was to windward, and you can always see further to windward than to leeward on soundings and in a haze like that; the Washington was the largest, and that would have made her easier seen.

9. Is not the weather frequently hazy on soundings off the coast where the collision took place, and with a southerly wind?

Ans. Yes, sir, it is always hazy toward the land in any direction.

10. Do you or not think the Mary Francis could have taken any course to avoid collision with the Washington had she seen the Washington half a mile off, and why?

Ans. No, sir, I don't think she could; it would'nt have left her distance enough to answer her helm, each vessel going five and a half knots an hour, as I believe they were.

11. At what rate was the Washington then sailing?

Ans. I believe the log gives five and half knots. I am not sure. Both vessels must have been going about the same.

12. What was the breeze at that time; was it or not safe and prudent for the Washington to sail at that rate, and with such sails set as you have before mentioned, on such a night and with such a breeze?

Ans. We had about five and a half knot breeze; it was prudent for the Washington to sail as she did.

13. Was there or not any omission, on the part of those then having charge of the Washington, to keep such a look-out as is usually kept on board vessels at sea?

Ans. I can't say as to that; of course there is always a look-out kept; I was at the wheel. There was a look-out on board the Washington; I couldn't see it.

14. Did you *are* not hear any hailing, or noise, before the man forward called out "hard up the helm," and when and what was it?

Ans. I heard some voices forward calling out, and I couldn't make

out what it was; I supposed it was some crazy passengers we had; they used to make a noise and come on deck and ask the captain to put them on shore; the noise was about a minute before I heard the cry to put the helm up.

15. (De bene esse.) Did you say to any of the crew of the Mary Francis that there was no look-out kept on board the Washington at the time of the collision, or that all hands were at the pumps?

Ans. I might have said that to them, but I didn't know it myself.

16. What became of the Mary Francis after the collision; did she sink?

Ans. No, sir, she didn't sink immediately; we left her the same way we met her, all sails standing, and took off her crew and their clothing and one boat.

Cross interrogatories by Mr. Pope, counsel for libellants.

1. Which tack was the Mary Francis standing on at the time of the collision?

Ans. She must have been on the starboard tack by the way she came across our bows.

2. Were the men pumping just before the collision, and how long before; and did that make any, and how much noise?

Ans. I believe about the time of the collision they were getting ready to pump, getting the spears; I heard the second mate call out for the hands to pump, and this generally takes all but the man at the wheel and him on the look-out; this was couple of minutes or so before the collision; I didn't hear them pumping before the collision, nor any noise about it.

3. Did or did not the mate call all hands to the pumps, and did you see who came?

Ans. I did'nt see who came; I heard him cry "pump ship," which is the general order.

4. What sort of a quarter-deck or poop-deck had the Washington; and how high were her bulwarks; and could you see well all around your ship?

Ans. A flush-deck fore and aft, with a small house *vever* the cabin, behind which the *the* man at the wheel stood; the bulwarks were three feet and a half, as near as I can judge, and from where I stood, and looking into the compass, I had no chance to see.

5. After John Simmons sung out that there was a ship into you, did the Washington feel her helm so as to alter her course before you hit the Mary Francis; if any, how much?

Ans. I don't think she had any time.

6. If the Mary Francis had hailed the Washington at good hailing distance, could you have kept the Washington clear of her if you had at that distance been ordered to put up the helm of the Washington?

Ans. We couldn't have heard her at hailing distance that night, we being to windward; the voice would have been carried away from us; in fair weather, at good hailing distance, if we had heard her, we might

have cleared her; but a vessel carrying plain sail close hauled it is difficult to hear; the noise of the sails prevents it; it would require a speaking trumpet from a vessel along side.

7. How far off could you have hailed the Mary Francis on the night of the collision?

Ans. About fifty or sixty yards.

8. How far off could the crew of the Mary Francis have hailed the Washington, and have been heard on the same night?

Ans. I can't say that.

9. Had you known the Mary Francis was near you at a quarter of a mile distance, could you not have kept the Washington clear of the Mary Francis by putting her helm up?

Ans. I don't believe we could at that distance.

10. How do you know it was darker to leeward than to windward; did you pay any particular attention to the state of the horizon till after the ships struck?

Ans. It always is on soundings; it is always lighter when the wind is blowing the haze, than where the haze is settling.

11. How many points to windward or leeward was the Washington of the Mary Francis at the time, and which?

Ans. When I *see* the Mary Francis she was no points; she was across our bows.

12. Were you on soundings when the collision occurred?

Ans. I don't know, sir.

13. Was it a cold morning when the collision occurred, and how cold?

Ans. It was not very cold; it was a kind of frosty, clear night over head.

14. What sort of a day was it the day before the collision, and what was the weather, cold and clear, or how otherwise?

Ans. I don't remember.

15. What was the weather on the day of the collision a few hours after it; was it clear and cold?

Ans. It was fine, but not very warm on the coast, 11th December.

16. How high did the seas run on the night of the collision; was it a rough and boisterous night or not, and how otherwise; was it or not a high wind?

Ans. It was smooth water and a five and a half knot breeze.

17. What was the difference in size of the Washington and the Mary Francis; how much larger was the one than the other, and how much higher did the Washington ride than the Mary Francis in the water; was there any great difference in the canvass carried by each, and how much, and how do you know the several matters inquired of in this interrogatory?

Ans. The Washington was larger than the Mary Francis; I can't say how much; there was not much difference in the appearance of the canvass they carried; though the *the* Washington carried larger

sails; I know from what I saw; the Mary Frances was deeper than the Washington.

Additional interrogatories by Mr. Sohier.

1 ad. Considering the relative positions of the Washington and the Mary Francis, and the wind, could a hail have been heard on that night by the Washington from the Mary Francis at a distance sufficient to have enabled the former to have kept clear of the latter had she then endeavored to do so?

Ans. No, sir, I don't think it could.

2. Is not "hailing distance" a nautical phrase; what distance in miles or yards is meant by that term?

Ans. I have heard them talk of hailing distance, but it depends on the weather and circumstances.

EDWARD ⋈ McCOEY.

Attest:

ED. G. LORING.

U. S. A., *district of Massachusetts.*

This 25th February, A. D. 1848, personally appeared before me the above named deponent, who being sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause now in hearing, was examined by the parties hereinafter named on written interrogatories, which, with his answers thereto written down by me in his presence, after being carefully read over to him, were by him subscribed, in my presence, as and for his deposition. Taken at the request of J. P. Wheeler, the libellant, to be used in a libel pending between him and the ship Washington before the district court of the United States, holden at Boston, in and for said district, and said deponent being bound on a voyage to sea is the cause for taking this deposition, and said adverse party attended.

EDW'D G. LORING,
Commissioner.

Fee $9 00.

Deposition of John Edgecombe.

I, John Edgecombe, of Gardiner, in the State of New Hampshire, of lawful age to testify on oath, depose and say, in answer to interrogatories by Wm. Sohier, esq., counsel for respondents:

1. What is your age, and how long have you followed your avocation?

Answer. I am twenty-two years of age; a mariner, and have followed the seas six years.

2. Were you engaged on board the Washington in any, and what, capacity, *in* the 11th December last? State the size and tonnage of

said vessel, the number of her crew, the place where she then was, and the voyage she was then pursuing.

Answer. I was then on board the Washington as foremast hand; she is, I believe, about five hundred tons; her crew, all told, were about twenty; she was a little to the southward, I believe, of Nantucket shoals; I don't know exactly; bound to New York from Liverpool.

3. Did a collision take place between said ship and the Mary Francis on the morning of the 11th of December? If so, state all the circumstances connected with it within your knowledge; the watch then on deck; what they were engaged in doing; the tacks on which the vessels were respectively sailing; the state of the weather; whether it was [hazy] or not, and where; when and where the Mary Francis was first seen; what course was pursued by the Washington, and what by the Mary Francis, &c.?

Answer. On that day a collision took place in the morning about half past three; the second mate's watch was then on our deck; the second mate's name was Young; his watch was myself, Simmons, Reed, Johnson, or Brown; McCoey and a stranger was in the watch; I was at the pumps; Reed had been sent forward to look for a marlin spike; Johnson was at the pumps, and McCoey at the helm; Simmons had the look-out, and I left him forward, walking backwards and forwards, by the fore rigging. When I went to the pumps, Mr. Young was standing by the pumps; the Washington was on the larboard tack, and the Mary Francis was on the starboard tack; the weather was starlight, and a dark horizon; it was hazy; when I first saw the Mary Francis, she was about two points on our lee bow, and close to us, and I had only time to rise up and see her, when she was right into us. I first heard "hard up" from forward; I rose up and looked, and saw this ship over the lee bow, and as soon as I saw her I sung out "hard up" myself; I hadn't more than got the words out before she struck; I couldn't tell whether the Washington altered her course any; there wasn't time to see, and there wasn't time for her; the Mary Francis luffed too; I don't know that she hailed, as I didn't hear her.

4. How near the wind, and at what rate and with what sails set was the Washington sailing at the time of the collision; how long had you been at the pumps when the same occurred; had any person, and whom, been on the look-out before the hands were called to the pumps; how often was the Washington pumped; was this necessary; how many hands were required to man the pumps?

Answer. The Washington was, I suppose, between six and seven points; going about five and a half knots, with all sails set but her main royal; we had been at the pumps when the collision occurred about ten or fifteen minutes, I think, and before the hands were called to pump Simmons had been on the look-out; the Washington was pumped once in four hours, and it was necessary; the pumps had sometimes two, and sometimes four or five hands.

5. Which vessel is the largest; which could be seen the farthest, and

why; how far, in your opinion, could the Mary Francis have been seen from the Washington at the time of the collision?

Answer. The Washington is the largest, and I believe from one hundred to two hundred tons, as I heard them say the Mary Francis was about three hundred tons; I should think the Washington could be seen the farthest; she was the largest, and we were to windward, and you can generally see the farthest to the windward in the night, and she was in towards the land from us, and it is always darker towards land in the night than it is out; and there is a difference on soundings, as there is a kind of vapor rising from the water which makes it thick to landward; I don't think we could have seen the Mary Francis above sixty or seventy yards off.

6. Could or could not the Mary Francis, in your opinion, have been seen by the Washington on that morning at a distance sufficient to have enabled the Washington to have avoided the collision?

Answer. I don't think she could.

7. How many minutes would it have taken to get the Washington before the wind; do you or not think that the Mary Francis could have avoided the collision had she endeavored to do so?

Answer. I should think it would take near five minutes to get the Washington before the wind; I don't think the Mary Francis could have avoided the collision; I don't think she had time.

6. State whether or not you have heard any of the crew on board the Mary Francis speak of the length of time during which they had seen the Washington before the ship struck; if so, what was said and who said it?

Answer. All I heard was one of them say he saw the ship first; he didn't say when or how far.

7. State whether or not you ever, and when, said to any of those on board the Mary Francis, that there was no look-out kept on board the Washington, or that all her hands were at the pumps?

Answer. I never told any one any such thing as that.

Cross interrogatories by Mr. Pope for the libellants.

1. How long had you and Johnson been at the pumps when "hard up" was sung out from forward?

Answer. I suppose nine or ten minutes.

2. What had you been doing before you were called to the pumps?

Answer. Walking the deck forward to keep myself warm.

3. Was not your whole attention taken up at the pumps from the time you first went there?

Answer. Yes, sir, till I heard "hard up."

4. Was any extra caution taken to keep any extra watch or look-out on board the Washington on the morning of the collision by reason of the darkness?

Ans. Yes, sir; the order was given from the second mate when the watch went on deck to keep a sharp look-out forward.

5. Could not pumping the ship have been omitted on that night, if it was rendered necessary by the darkness to keep all hands on the look-out?

Ans. No, sir; I don't think it could; the ship had salt, and it would be getting wet with too much water in her.

6. Was any light kept on the Washington's bow on the night of the collision?

Ans. No, sir; I did'nt see any.

7. Would not the noise of the pumps prevent you from hearing the hailing from the Mary Francis, if such hailing had been made at any distance that would have been great enough to keep the Washington clear of the Mary Francis?

Ans. The pumps were not going; we were drawing the spear at the time.

8. Had the Washington been aware of the reasons of the Mary Francis ten or fifteen minutes before the collision, could not the Washington have avoided the collision?

Ans. She could, ten or fifteen minutes before.

9. How long would it require to bring the Mary Francis into the wind and shake her sails on the night of the collision?

Ans. I suppose a minute and a half or two minutes.

10. How many yards distance must the ships have been apart to have given room to keep the Washington off, if the two ships were each seen from the other?

Ans. I suppose probably a hundred yards, and I don't know that they could in that time.

11. Did you see Simmons on the look-out when you went to the pumps; what was he doing; where was he at the time? State exactly.

Ans. When I went to the pumps he was walking fore and aft the deck forward of the fore rigging on the larboard side.

12. Were you on soundings when the collision occurred; how do you know?

Ans. Yes, sir; because we hove the lead the night before and got soundings.

13. How much further could the Washington be seen than the Mary Francis, owing to the difference of their size?

Ans. I don't know exactly what difference it would make.

14. Was the canvass spread by the Washington much greater than that spread by the Mary Francis?

Ans. Yes, sir; it was more and considerably larger.

15. Do you know it was not as dark to windward as to leeward?

Ans. Yes, sir.

16. What caused the darkness to leeward?

Ans. The land, I suppose; it always does, and the wind blowing the fog to leeward.

17. Had there been any change of the wind for some time previous to the collision; when and from which quarter had the wind blown before such change?

Ans. Nothing of change that night that I know of.

18. How do you know which way land bore from your ship at the time of the collision?

Ans. I know by what the second mate said; I am no navigator.

19. How much further could you see to leeward than to windward at the time of the collision?

Ans. A mile further, perhaps more.

20. Was the weather boisterous and the sea high at the time of the collision?

Ans. No, sir; the water was quite smooth.

21. Was not your ship noisy at all times, and what made the noise?

Ans. She was noisy all the time; we had some crazy passengers who used to make a noise; they were making a noise that morning.

22. Was it not noisy for some time before the collision on board the Washington?

Ans. Yes, sir; an hour before; probably before.

23. How far are you generally heard to windward, and how far to leeward, in good weather?

Ans. In a five and a half knot breeze you can hear a hail thirty or forty yards to leeward; I suppose less to windward; say twenty or twenty-five yards.

24. If there had been no noise from your passengers, how far off could you have hailed the Mary Francis on the night of the collision.

Ans. I don't know, sir.

25. How far could hailing be heard from the Mary Francis on that night, when the passengers were making the noise they made?

Ans. I don't know.

26. If there had been no noise from your passengers, how far off could the Washington have been hailed from the Mary Francis so as to be heard that night?

Ans. I don't know how far; I should think twenty-five yards.

27. When did you first notice the darkness of the horizon to leeward on the night of the collision? And state if anything and what called your attention to it particularly.

Ans. It had been so all the watch; I saw it when I came on deck; I don't know what called my attention to it; we generally take a look at the weather when we come on deck.

28. Had you been aware of the presence of the Mary Francis when she was a quarter of a mile off, could not the Washington have been put before the wind soon enough to have avoided the collision?

Ans. No, sir, I don't think she could.

29. Just before the collision, had not the Mary Francis her sails full; had she fallen off, and what course was she steering?

Ans. No, sir, she was all shaking; luffed right up into the wind's eye, and across our bow.

30. Have you talked with the master, or any of the crew of the Washington, and which of them, about the collision, or your testimony relating thereto; and when, and with whom? State all that was said.

Ans. No, sir; I have been in the hospital, and have not seen them.

JOHN EDGECOMB.

31. Did you not hear any of the officers or crew of the Washington, and which of them, say, immediately after the collision, that there had not been a good look-out kept on board of the Washington on the night of the collision?

Ans. No, sir.

UNITED STATES [OF] AMERICA,
District of Massachusetts.

February 22d, 1848, personally appeared before me the above named deponent, and made oath that he would speak the truth, the whole truth, and nothing but the truth, in relation to the cause now in hearing, and was then examined by the parties hereinafter named on written interrogatories, which, with his answers thereto, were written down by me in his presence; and after being carefully read over to him by me, were by him subscribed as and for his deposition. Taken at the request of J. P. Wheeler, to be used in a libel pending between him and the ship Washington, before the district court of the United States for said district, holden at Boston, and said adverse party attended; and said deponent being bound on a voyage to sea is the cause of taking this deposition.

EDW. G. LORING, *Comm'r.*

The deposition of James Johnson.

I, James Johnson, of Brookhaven, in the State of New York, of lawful age to testify, on oath depose and say—

Interrogatories by Mr. Sohier, counsel for the respondents.

1. What is your occupation, and how long have you followed it?

Ans. I am a mariner, and have followed the seas eight or nine years.

2. Were you or not engaged on board the Washington on the 11th December last; if so, in what capacity; where was the vessel at that time; what voyage was she then pursuing; what is her tonnage; of what did her cargo consist; how many hands had she on board; was she or not seaworthy?

Ans. I was on board the Washington the 11th December, as foremast hand; she was some where off Nantucket, as near as I can tell; I can't say exactly where; she was on a voyage from Liverpool to New York. She is about five hundred tons, I suppose; her cargo was salt, and a large number of steerage passengers; she had about twelve hands in the forecastle; she was seaworthy.

3. State whether or not a collision took place on the morning of the

said 11th December, between the Washington and the Mary Francis. If so, state the time when the same took place.

Ans. A collision took place between those vessels about seven bells and a little after, on 11th December.

4. What was the weather at that time, and what breeze had you; on what tack was the Washington, and how fast she was sailing, and how near the wind; on what tack was the Mary Francis sailing, and how near the wind, in your opinion?

Ans. The weather was a very dark horizon, starlight over head, and a decent breeze of wind. The Washington was on the larboard tack, and going five to five and a half knots an hour, and full and by; the Mary Francis was on the starboard tack, and I thought she was steering full and by, as near as I could tell.

5. What watch was on the deck of the Washington when the collision took place; was any person on the look-out; what were you doing?

Ans. The second mate's watch was on deck, and Simmons was on the look-out; I was at the pumps.

6. How often was the Washington pumped; who were at the pumps with you when the collision took place?

Ans. She was pumped every seven bells; John Edgecombe and second mate were with me at the pumps.

7. What course was taken by the Washington, and what by the Mary Francis, when, and at the time the collision occurred?

Ans. I heard some one on board the Washington sing out "hard up the helm"—a minute or so we were into her. The Mary Francis appeared to be trying to luff up into the wind as much as she could, while we were trying to keep off.

8. Which vessel was to windward; how did the Mary Francis bear from the Washington?

Ans. We appeared to be to the windward; as near as I could come to it, the Mary Francis bore about northwest.

9. Could either vessel, and which, in your opinion, be seen at a greater distance from the other?

Ans. I should think we could have been seen from the Mary Francis further than she could have been seen from us, because we were larger, and it looked more hazy to leeward on the horizon than it did to windward. It was a very dark horizon to leeward that night.

10. At what distance, in your opinion, could the Mary Francis have been seen from the Washington on the morning of the collision, and at the time at which the collision took place?

Ans. I suppose we could have seen her about sixty yards.

11. Did or did not any person of the crew of the Mary Francis say any thing to you, and what, about the length of time the Washington had been seen before the collision; what was said, and when, and by whom?

Ans. (Objected to.) I don't recollect that there was.

Cross interrogatories by libellants' counsel, Mr. Pope.

1. How long would it take to get the Washington before the wind on that night, with a five and a half knot breeze?

Ans. I suppose, before she would be before the wind, it would take four or five minutes.

2. How many men had been on the look-out forward half an hour before the collision, and before the men were called to the pumps?

Ans. I and another were walking up and down by the fore rigging, and beside there was a man on the look-out.

3. When did you last see the man at the look-out before the collision, and what was he doing?

Ans. He was forward walking the forecastle, I believe, when I was called to the pumps. I went to the pumps, and did'nt see him afterwards.

4. How far could you see the canvass of the Mary Francis on the night in which the collision took place?

Ans. I can't say exactly, I suppose sixty yards about.

5. How far could you have hailed the Mary Francis on the night of the collision?

Ans. I can't exactly tell; I suppose about twenty yards.

6. How far can you generally hear hailing in good weather at sea?

A. I suppose a quarter of a mile.

7. Did you hear the crew of the Mary Francis hail you before the collision?

Ans. I heard a noise a few seconds before the collision; we heard the noise when at the pumps, and thought it some crazy passengers we had, and then in a second or two we were into her.

8. How long before Simmons sung out "hard up the helm," did you hear that hailing?

Ans. It wasn't scarcely any time at all.

9. How many points to the windward of the Washington was the Mary Francis when you first saw her?

Ans. When I first saw the Mary Francis she was athwart our bows.

10. How far could you see the hull of the Mary Francis on that night?

Ans. I suppose forty or fifty yards.

11. Could you see on what tack the Mary Francis was standing when Simmons cried hard up your helm; how far off was she, and on which bow?

Ans. I couldn't see what tack she was on when Simmons cried "hard up the helm;" I hadn't scarcely seen her. I had just lifted up my head from the pumps, and hadn't made her out. I can't say how far she was then off; she was on our lee bow.

12. When you first saw the Mary Francis were her sails full?

Ans. They appeared to be to me.

13. How long would it take the Mary Francis to come up into the wind on that night?

Ans. About three or four minutes, I suppose.

14. What tack was the Mary Francis standing on when the vessels hit?

Ans. She was on the starboard tack.

15. Did the sails of the Mary Francis shake before you hit the Mary Francis?

Ans. I didn't see them shake.

16. What was there to prevent the hailing of the Washington by the Mary Francis being heard at a good distance that night?

Ans. Because the Mary Francis was to leeward, and the wind blew the sound away from us.

17. Did you make any observations of the state of the horizon on that night to windward of your ship?

Ans. I looked there, and it looked quite clear to windward.

18. When did you first discern the horizon to be so dark on that night to leeward?

Ans. About two or three o'clock it looked quite hazy to leeward; a dark horizon.

19. If you had known the Mary Francis was near you, when she was a quarter of a mile off, could not the Washington have been kept clear of her?

Ans. No, sir, I don't think she could.

20. Was not your ship noisy always; what was the cause?

Ans. The passengers were always making a noise, both by night and day, because we had some crazy passengers aboard—one or two.

21. Was there not a considerable noise just before the collision, made by the passengers?

Ans. Yes, sir, there was.

22. Why could not hailing be heard on that night from the Washington at good hailing distance?

Ans. There was a smart breeze of wind. I don't know of any thing else.

23. Was there not a noise made by the man at the pumps on that night just before the collision, and how much?

Ans. We were not making much of a noise; we were working at the pumps; that was about all; the working of the pumps makes a noise; ours made as much as usual, and no more.

24. Could not have hailing been heard nearly as far from the one ship as the other on that night; what would be the difference?

Ans. No, sir; it could'nt be heard as far from the Mary Francis as from us, because she bore some to leeward of us, and the wind would naturally send the voice to leeward.

25. If you had known the Mary Francis was near you ten or fifteen minutes before the collision, could'nt you have kept the Washington clear of Mary Francis?

Ans. We could if we had known it fifteen minutes; I can't say as to ten.

26. Did the Washington feel her helm so as to alter her course before she hit the other ship, and how much?

Ans. She did'nt alter her course a great deal, she hadn't time; I suppose she altered her course a very little, a point or so.

27. After you hit the Mary Francis did she shoot ahead any?

Ans. Yes, sir, she shot ahead a very little, and swung alongside.

28. Would not the noise at the pumps be enough to prevent you from hearing the hailing from the Mary Francis?

Ans. Yes, sir.

29. Could not your ship have been hailed ten or fifteen minutes before the collision from the Mary Francis, so that it could have been heard; how many minutes before could she?

Ans. We could not hear them so far as that; I can't say how many minutes before we struck; we could have heard her hail, I suppose a minute or so.

30. Do you know how the ships bore towards each other by compass, or which way the wind was by compass?

Ans. I suppose by compass the Mary Francis bore about northwest; and the wind was about south southwest.

31. Did the sea run high on the morning of the collision; what was the weather at ten or eleven o'clock of the day after the collision; was it clear and cold?

Ans. The sea was not high that morning; at ten or eleven o'clock of the day after the collision it was fine weather; it was clear and not cold.

32. What was the weather on the evening before the collision; was it clear and cold, or how otherwise?

Ans. I don't recollect how it was.

33. Had you heard the hailing of the crew of the Mary Francis at good hailing distance, could not the Washington have been put before the wind in time to prevent the collision?

Ans. I don't know what hailing distance is.

35. Have you talked with Capt. Benson on the subject of the collision in relation to your testimony in this case; if so, when, and what was said by each of you? State particularly.

Ans. No sir, I have not had any thing to say to him about it that I recollect, only he told me to stop here to be a witness.

36. Have you talked with your shipmates, Simmons, Edgecombe, or McCoey, concerning the collision; if yea, with whom, when, where, and what was said by each?

Ans. (Mr. Sohier objects.) I may have talked with them; I don't know what was said; it was seldom I said a word about it since I have been with them; I have been with them every day.

37. What persons have you talked with relative to the collision or your testimony in this case; when, what was said by you, to whom was it said, and what was said to you?

Ans. I can't say.

38. Have your shipmates, Simmons, Edgecombe, or McCoey, talk-

ed with you in reference to the collision or their testimony in this case, and which of them, and when?

Ans. (Mr. Sohier objected to the question.) I don't recollect to have heard them talk about it; perhaps they have.

39. How much further could the Washington have been seen on the night of the collision from the Mary Francis than the Mary Francis could have been seen from the Washington?

Ans. I can't say how much further; a good distance, twenty yards further.

his
JAMES ⋊ JOHNSON.
mark.

Attest:

E. G. LORING.

U. S. A., *district of Massachusetts.*

This 25th February, A. D. 1848, personally appeared before me the above named deponent, who being sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which his deposition was taken, was examined by the parties hereinafter named on written interrogatories, which, with his answers thereto written down by me in his presence, after being carefully read over to him by me, were by him subscribed in my presence as and for his deposition; taken at the request of J. P. Wheeler, libellant, to be used in a libel pending between him and the ship Washington before the district court of the United States, for the district aforesaid, and said adverse party was present, and said deponent being bound on a voyage to sea is the cause of taking this deposition.

EDW. G. LORING,
Commissioner.

Fee 10.

The deposition of William Reed.

I, William Reed, of Glasgow, in Scotland, of lawful age to testify, on oath depose and say, in answer to

Interrogatories by Mr. Sohier, counsel for respondents.

1. Please to state your name and age, and occupation, and how long you have followed the seas.

Ans. I am twenty-four year of age, and a mariner, and have followed the seas for ten years.

2. Were you or not engaged on board the ship Washington, of Richmond, on the 11th December last; if so, in what capacity? State the size and tonnage of the said vessel, her cargo, the number of her crew, and the condition of the said ship, and her voyage.

Ans. I was a foremast hand on board the Washington, 11th De-

cember last. She is about five hundred tons, I think; her cargo was salt and 170 steerage passengers; her crew, all told, were twenty; her condition was seaworthy, and she was bound from Liverpool to New York.

3. State whether or not a collision happened between said ship and the ship Mary Francis on said 11th of December; if so, state the hour of the day, and whether any, and what, watch was then on board the Washington, and who composed it?

Ans. On the eleventh day of December last, at half-past (3) three o'clock, a. m., there was a collision between the Washington and Mary Francis; the second mate's watch was on deck on board the Washington; Mr. Young, the second mate, Simmons, myself, McCoey, Edgecomb, and I believe Johnson, (and six in all,) composed the watch.

4. State whether you saw the Mary Francis before, and how long before, the collision; on what part of the Washington were you at the time; was any person, and whom, on the look-out; where was the second mate at that time?

Ans. I saw the Mary Francis about a minute and a half before the collision. I was then forward by the fore hatchway. Simmons was on the look-[out], and forward by the windlass; I believe the second mate was at the pump.

5. How did the Mary Francis bear from the Washington when you first saw her; at what distance was she; on what tack was she; what was the weather at the time; on what tack was the Washington, and on what was the Mary Francis?

Ans. I saw her on our lee bow about four points, and about sixty yards from us; she was on the larboard tack; the weather was fine; it was starry over head, but not very clear, and rather foggy in the horizon; the Washington was on the larboard tack, and the Mary Francis also.

6. Could you or not have seen the Mary Francis at any, and what, greater distance than that at which you first saw her? State your reasons for your opinion.

Ans. No, sir, I think not, because of the thickness being to leeward.

7. How was the Washington sailing when you first saw the Mary Francis, and at what rate?

Ans. She was heading west, or west half north, and as close to the wind as she could lay, going full and by, and about five knots and a half.

8. What was done on board the Washington when the Mary Francis was first seen by you, and what course was taken by the Mary Francis; what was your position in the Washington, and what were you doing when you first saw the Mary Francis?

Ans. Our helm was put up. I don't know what was done on boa.d the Mary Francis, but she was coming right athwart our bows. I was going round the fore hatch, looking after a marline-spike, and when the man at the look-out sung out "hard up," I looked and saw the Mary Francis.

9. Was or not the Washington to windward of the Mary Francis, when you first saw the Mary Francis?

Ans. Yes, sir, the Washington was to windward of the Mary Francis a little bit when I first saw her.

10. Could or not the Washington have taken any, and what, other course, to keep clear of the Mary Francis, than that adopted by her?

Ans. The Washington could have done nothing but what she did; she couldn't have cleared the Mary Francis any how.

11. Who sung out "hard up;" did you or not see John Simmons on the look-out, at and prior to the time when you first saw the Mary Francis?

Ans. Simmons, the man on the look-out, sung out "hard up;" I saw Simmons walking the weather side of the deck, forward and back, before I saw the Mary Francis; he was so walking when I was looking for the marline-spike.

12. Were any persons, and who, at the pumps on board the Washington when the Mary Francis was first seen?

Ans. Edgecombe, (Brown, or Johnson,) we called him Brown, and the second mate, were at the pumps then.

13. How often, and for what length of time, was the Washington pumped during her voyage; was this necessary?

Ans. She was pumped every four hours, and this was necessary.

14. Could or not the Washington, in your opinion, have been seen at a greater distance from the Mary Frances than the Mary Francis from the Washington, and why?

Ans. Yes, sir, because it was clearer to windward than to leeward at the time, as we were on soundings, and there was a fog; the size of the vessels would make a little difference, but a very little.

15. Could the Mary Francis have taken any course to avoid the collision, other than that pursued by her?

Ans. Yes, sir, they could have done it if they had seen us a long time before we saw her; they could, if they had seen us as soon as they said.

16. Did you or not hear any persons, and whom, at the time the said collision took place, of the crew of the Mary Francis, speak of the length of time at which the Washington was seen before the collision took place; if so, what was said?

(Mr. Pope objected to the 16th interrogatory.)

Ans. I heard some of the crew of the Mary Francis, I can't say who, say, when they first came on board of us, that they had been looking at us some time, and thought we were a vessel going the same way as themselves; they said, some of them, that they had seen us for half an hour, but I couldn't believe it; this was said at the time they jumped on board, just after the vessels struck.

17. Did you or not hear any hailing or cries, before or at the time you saw the Mary Francis; from whence did they proceed, and what was said?

Ans. I heard a noise, and didn't know whether it was from the fore

hatchway or not; we had a crazy man down there, who was always shouting. I couldn't make out what the noise was, except that it was some one singing out.

18. Did you or not state to any of the crew of the Mary Francis, and whom, that there was no look-out kept on board the Washington, and that all her hands were at the pumps?

Ans. No, sir.

Answers to cross interrogatories for libellants.

1. Had you been on the look-out before you were looking for the marline-spike?

Ans. No, sir.

2. Was any man on the look-out on the night of the collision, on the lee bow of the Washington?

Ans. No, sir.

3. Were any men on the look-out but Simmons, before you saw the Mary Francis?

Ans. No, sir.

4. Where was Mr. Young all the time, for fifteen or twenty minutes before the collision?

Ans. At the pumps.

5. What was he doing at that time?

Ans. Pulling the spear up.

6. When did he order the men to the pumps?

Ans. At seven bells; twenty minutes or more before the collision.

7. Where were the men when he ordered them to the pumps, and what were they doing?

Ans. They were sitting forward, and doing nothing.

8. Did or not you, or any of the men, keep a look-out in your watch but Simmons, for half an hour immediately preceding the collision?

Ans. We were all walking the deck forwards, and I can't say we were looking-out.

9. How long had you been near the fore hatch looking for the marline-spike, at the time Simmons sung out "hard up the helm?"

Ans. I had just come from the pumps, to get the marline-spike to fix the pump with.

10. Who ordered you to look for the marline spike, and for what purpose was it wanted; how long had you been at the pumps before you went to the fore hatch?

Ans. The second mate ordered me to look for the marline-spike; it was wanted to loosen the pump brake. I had been at the pump twenty minutes before I went to the fore hatch.

11. How long before Simmons sung out "hard up the helm," did Mr. Young order you to look for the marline-spike?

Ans. About three or four minutes.

12. Was not your whole attention taken up at the pumps and looking for the marline-spike, for half an hour before the collision?

Ans. No, sir, not quite.

13. What else were you doing?

Ans. Nothing else, sir.

14. From which bow of the Washington could the Mary Francis be best and soonest seen?

Ans. From the weather bow.

15. When you last saw Simmons, before the collision, where was he, and what was he doing?

Ans. Walking the weather side of the deck, forward by the windlass end.

16. When did you last see Simmons?

Ans. Just before the vessels struck.

17. How much of the half hour preceding the collision could you see Simmons?

Ans. I saw him all the time near, walking backwards and forwards.

18. Do you mean to swear that you could not have seen the Mary Francis from the Washington soon enough to have prevented the collision, if you and the other men had not been ordered about other business by the second mate?

Ans. Yes, sir, I mean so.

19. Which way was the wind, and which way were both ships steering at the time of the collision by compass? State how you know.

Ans. The wind was south southwest, as near as I can guess; we were steering west; I don't know how the other ship was steering, only by her standing across our bows. I know by seeing the compass and the ships.

20. When did you see the compass?

Ans. Some time that night; I can't be certain when.

21. When you first saw the Mary Francis, could you see plainly what tacks she had on board; what tacks had she on board?

Ans. I could not see plainly at first what tacks she had on board; she had her larboard tacks aboard.

22. How far was the Mary Francis to your leeward, or windward, when you first saw her, and which?

Ans. About four points to leeward.

23. In your answer to the twelfth direct interrogatory, when you say the Washington couldn't have done any thing else than was done, don't you mean that there was not time, after the Mary Francis was seen from your ship, to do any thing else?

Ans. Yes, sir, I mean there wasn't time.

24. How long would it have taken to bring the Washington before the wind on the night of the collision?

Ans. Three or four minutes, sir.

25. If you had seen the Mary Francis was near you at good hailing distance, could you not have kept clear of the Mary Francis by putting the helm of the Washington up?

Ans. I don't know what hailing distance is; it depends on the weather.

26. How long a distance could a ship be hailed on the night of the collision?

Ans. About forty yards off, with a speaking trumpet.

27. What sort of a night was it on the morning of the collision?

Ans. Stars were shining, but not very bright, and hazy all round, and most to leeward; a pretty rough sea on—a middling sea—and not a very high wind.

28. Could you see the man at the wheel from the fore hatch?

Ans. No, sir.

29. Where were you when you heard the noise you spoke of, when asked if you were hailed from the Mary Francis?

Ans. I was at the fore hatch when I heard the noise.

30. Did you pay any attention to what the noise was you heard before the collision, or did you continue looking for the marline-spike; and how long was it before Simmons sung out "hard up the helm?"

Ans. I paid no attention to the noise, and continued looking for the marline-spike, and the noise was a second or two before Simmons sung out.

31. Was or was not your ship noisy on the morning of the collision, and what made the noise?

Ans. She was always noisy; the people down below made it; it was so that morning.

32. How long did the crew of the Mary Francis say they saw the Washington before the collision; who said it?

Ans. Some of them said half an hour, but I couldn't believe it; I don't know who said it.

33. What could the crew of the Mary Francis have done to have kept clear of you, if they saw the Washington, as you say they told you?

Ans. They could have kept her away, if they had seen us as long as they said.

34. How full were the sails of the Mary Francis when you first saw her?

Ans All full, sir.

35. Had the Mary Francis come up into the wind when you first saw her?

Ans. No, sir.

36. If the Mary Francis had been seen by your crew one quarter of a mile off, could not the Washington have been brought before the wind in time to avoid the collision?

Ans. No, sir; because the two were running towards each other.

37. Would not putting down the helm of the Mary Francis, and bringing her into the wind, have aided to keep the ships clear, if you had put the Washington's helm up at good hailing distance?

Ans. No, sir.

38. What was the reason you could not hear hailing at more than thirty yards on the night of the collision?

Ans. Because of the noise of the vessel; there is always a noise about the vessel's bow, and from her going through the water in general.

39. What made the night so dark that you could not see more than sixty yards towards the Mary Francis?

Ans. Because there was no moon, and the haze together.

40. Was not the weather clear and cold after the collision, at day break?

Ans. Cold, but not very clear.

41. Was Simmons sitting down or standing up when you last saw him before the collision?

Ans. He was walking.

42. Who have you talked with upon the subject of the testimony you were to give in this case, and when? State particularly all that was said at each time by you and the person you talked with.

Ans. I never talked with any body about it.

WILLIAM REED.

UNITED STATES [OF] AMERICA,
District of Massachusetts.

This seventeenth day of February, A. D. 1848, personally appeared before me the above named deponent, who being sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which his deposition was taken, was examined by the parties herein after named on written interrogatories, which, with his answers thereto, written down by me in his presence, were, after being carefully read over to him by me, by him subscribed in my presence as and for his deposition. Taken at the request of J. P. Wheeler, the libellant, to be used in a libel pending between him and the ship Washington, before the district court of the United States, for the district of Massachusetts, holden at Boston, in and for the said district, and said adverse party attended; and said deponent being bound on a voyage to sea, is the cause of taking this deposition.

EDW'D G. LORING, *Comm'r.*

The deposition of John Simmons.

I, John Simmons, of lawful age to testify on oath, depose and say, in answer to interrogatories by William Sohier, esq., counsel for the respondents, the ship Washington.

1. What is your age, occupation, and place of residence?

Answer. I am nineteen years of age; a mariner, and reside in Irvine, in Scotland.

2. Were you or not, on the 11th December, employed on board the ship Washington, of Richmond; in any and what capacity? Where was said ship at that time, and what voyage was she then pursuing?

Answer. At the time stated I was employed as foremast hand on board the Washington, which was then, as near as I can reckon, about

two hundred and fifty miles off Cape Cod, bound to City Point, New York, from Liverpool.

3. Please state the size and tonnage of the Washington.

Answer. I can't exactly say, but I think the tonnage of the Washington was about five hundred tons, and her length one hundred and sixty feet.

4. Please to state whether or not a collision took place, on said 11th December, between the ship Washington and Mary Francis; if so, state particularly whether or not the Mary Francis was seen by you before, and how long before, the collision; also, state the position of the Mary Francis when first seen, and how she bore from the Washington. State the course each was steering by compass, and their respective rates of sailing at the time the Mary Francis was first seen.

Answer. A collision took place between the Mary Francis and the Washington on the 11th December, at about half past three o'clock in the morning; I saw the Mary Francis about a minute and a half or two mintues before the collision; she was on our lee bow, between three and four points. The Washington was going about west, I should judge; I was not at the wheel at the time, and I should think the Mary Francis was steering about south southeast; the Washington was going about five knots and a half an hour; and, I should judge, the Mary Francis was going about the same.

5. Who first saw the Mary Francis? On what part of the Washington were you when the Mary Francis was first seen? Were you or not then on the look-out, and what was the state of the weather at that time.

Answer. I first saw her, and I was on the weather side of the Washington's windlass, and on the look-out; the weather was dark, cloudy, and hazy.

6. Who was on the deck of the Washington when you first saw the Mary Francis; what were each of them engaged in doing at that time?

Answer. The second mate's watch was on deck, consisting of Mr. Young, second mate, and six men altogether: myself, Edw. McCoey, John Edgecomb, Brown, William Reed, besides Mr. Young; I was at the time looking out; Brown, John, and Mr. Young were at the pumps, McCoey was at the wheel, and Reed was forward looking for a marling spike, I believe.

7. State whether or not the Mary Francis was distinctly seen when you first saw her; were you then able or not to make out her course and position? If not, state why not.

Answer. She was not. I had to study some seconds to see which way she was going, and I was not able at first to see her course and position, because it was dark.

8. State whether or not the weather at that time was hazy in the horizon, and whether or not this haze was denser and thicker in any and what part of the horizon than in others.

It was hazy in the horizon, and it was denser and thicker to leeward than elsewhere in the horizon.

9. State whether or not the Mary Francis, at the time you were first able to make her out, was luffing up into the wind. State what you did when you first made her out.

Answer. I couldn't make out exactly whether the Mary Francis was luffing up into the wind or not, but I believe she was; when I first saw her, I sung out to the man at the Washington's wheel to put the wheel up.

10. State whether or not you were keeping a good look-out at the time you first saw the Mary Francis; and whether or not her not having been seen before was attributable to the darkness of the night, or to any other and to what other cause.

Answer. I was keeping a good look-out; she was not seen before because it was dark, and she was to leeward of us.

11. State whether or not, in your opinion, the Washington could be seen from the Mary Francis at a greater distance than the Mary Francis could be seen from the Washington.

Answer. Yes, sir, because the Washington was on the weather side and to windward, and it was clearer to windward than to leeward, and she could see us better than we could see her; and the Washington was largest, and that makes some difference.

12. Was or not the helm of the Washington hard up, conformably to your order; could or could not the Washington, in your opinion, have taken any course to avoid the collision, [other] than that pursued by her?

Ans. I don't know whether the man at the wheel put her helm up or not; the Washington, in my opinion, could not have taken any other course than that pursued by her to avoid the collision.

13. Could or could not the Mary Francis, in your opinion, when at the distance at which you first saw her, have taken any, and what, course to avoid the collision which took place? State particularly and in full your reasons for any opinion which you may give.

Ans. I don't think she could, she was too close to us; if she had tried to wear, she would have run into us.

14. On what tack was the Washington; was she or was she not sailing close hauled, and how near the wind?

Ans. The Washington was on the larboard tack; she was close hauled, and as near the wind as she could lie.

15. What sails were set on the Washington, and what on the Mary Francis, at the time of the collision; what sort of a breeze had you?

Ans. The Washington had all sails, except the main royals, I believe; the Mary Francis had all sail, except the main royal and flying jib; the breeze was about five knots and a half.

16. Had or not the Washington any greater press of sail set than is safe and customary for a vessel to have when prosecuting a voyage on the ocean, on such a night and with such a breeze?

Ans. No, sir.

17. Please to state the circumstances attending the collision, the posi-

tions of the respective vessels which came in contact, and the amount *of dam* of damage which was done to the Mary Francis.

Ans. The Washington struck the Mary Francis abaft the fore rigging; it carried away all our head gear, and head stays, and cutwater, and I believe started some of the butts of the stern, from the bottom up.

18. State whether or not the Mary Francis was smaller and lower in the water than the Washington; what were the respective cargoes of the vessels?

Ans. The Mary Francis was lower and smaller than the Washington; of her cargo I know nothing. The Washington's cargo was salt, and 170 passengers between decks.

19. State whether or not the Washington was hailed from the Mary Francis before the collision; were any voices heard at that time by you; and if so, whose?

Ans. We heard somebody hailing, but couldn't say who it was; we thought it was some of the passengers; voices were heard by me at that time—I couldn't say whose—I heard a noise.

20. Who were the passengers on board the Washington; were any of them, and who, in the habit of crying out and making a disturbance; was it or not usual for them so to do?

Ans. They were Irish passengers, and two of them (men) were in the habit of crying out, making a noise; one of them was out of his mind.

21. When did you first hear the hailing, before or after you saw the Mary Francis; could you make out what was said?

Ans. I heard the hailing before I saw the Mary Francis, about half a minute; I could not make out what was said.

22. Was or was not the Mary Francis abandoned, and why?

Ans. She was abandoned in the morning by her crew; they stuck by her till about half-past seven o'clock in the morning; they then left her, and said she was sinking. She didn't sink while we saw her, and we stopped by her about four or five hours.

23. De bene esse. Did you or not say to any of the crew of the Mary Francis that when, or before, the collision took place, there was no look-out on the Washington, or that all her hands on deck were at the pumps?

Ans. No, sir.

24. Who were the officers of the Washington, and was she seaworthy?

Ans. Captain Benson was master, Mr. Taylor was mate, and Mr. Young second mate, and we had twenty men, all told.

Answers to cross interrogatories for libellants, J. P. Wheeler and al.

1. How long have you been a mariner?

Ans. About five years.

2. Was it not starlight at the time of the collision?

Ans. Yes, sir, over head.

3. Was not the wind, on the morning of the collision, south half-west; do you know, of your own knowledge, which way either the Washington or the Mary Francis was heading when you first saw the Mary Francis?

Ans. I can't say how the wind was; we were heading about west, as near as I can judge. I can't say exactly how the Mary Francis was heading.

4. Where was Mr. Reed for the fifteen or twenty minutes before the collision, and just before the Mary Frances was seen?

Ans. I can't say, sir.

5. Was any one else on the look-out just before the collision, and whom?

Ans. I didn't see any one but myself.

6. What were you doing before you first saw the Mary Frances, and for fifteen or twenty minutes before that time?

Ans. Walking the weather side of the deck.

7. Were you or not on the look-out on the weather side all the time last inquired about, or were you employed about any thing else, and what else?

Ans. No, sir, I was on the look-out all the time.

8. What was the distance between the two ships when you first saw the Mary Francis?

Ans. About sixty yards, as near as I can judge.

9. State what you did, and all you said, when you first saw the Mary Francis.

Ans. I sung out "hard up the helm," that is all; the ship was into us before I had time to do any thing.

11. Did you hail the Mary Francis at all?

Ans. No, sir.

12. Did you give the man at the helm any reason why you told him to put the helm up?

Ans. No, I hadn't time, I just sung out.

13. Did the Washington have any lights forward on the morning of the collision?

Ans. No, sir.

14. Did the Washington mind her helm, so as to alter her course, before she struck the Mary Francis, and after you saw the Mary Francis?

Ans. Yes, sir, it appeared to me as if the Washington was going off.

15. If the Mary Francis had been seen from the Washington at a distance of one-fourth part of a mile, could not the Washington have kept clear of the Mary Francis?

Ans. I don't know; I don't think she could.

16. If the Mary Francis had been seen fifteen minutes before the collision, could not the Washington have been kept clear of her?

Ans. Yes, sir, I think she could.

17. Where was the second mate when you first saw the Mary Francis, and what was he about?

Ans. I don't know; I didn't see him at the time.

18. Why could you not see the Mary Francis as well as her crew could see you?

Ans. She was to leeward of us.

19. How much difference would the fact last mentioned by you make in the time?

Ans. I think a vessel to windward could be seen almost two minutes sooner than a vessel to leeward.

20. When was it you first heard the noise from the Mary Francis, mentioned in your answer to the 20th direct interrogatory?

Ans. It was about a minute and a half to two minutes, from the time we heard the noise till we struck.

21. Did you hear any hailing from the Mary Francis before you saw her?

Ans. We heard some noise, but where it was from we couldn't tell; it was half a minute before I saw her.

22. Was not the noise you last mentioned that you supposed to be the noise of the passengers?

Ans. Yes, sir.

23. Was there any reason why the hailing of the Mary Francis could not have been heard on that night, when the two ships were a considerable distance apart?

Ans. No, sir, I don't think there was.

24. If the crew of the Washington had heard the crew of the Mary Francis hail her, at a hailing distance, could not the Washington have kept clear of the Mary Francis?

Ans. Yes, sir.

25. Might not the hailing from the Mary Francis have been prevented from being heard on that night by the noise of the passengers?

Ans. There was no noise [at] that time, only that supposed to be them.

26. Could not hailing have been heard, on the night of the collision, further than sixty yards?

Ans. Yes, sir, I think it could.

27. Were not the sails of the Mary Francis shaking when you first saw her?

Ans. No, sir.

28. How soon after you saw her did the Mary Francis's sails shake?

Ans. I couldn't say, sir, how soon.

29. Did what was done on board the Washington do any good whatever in preventing the collision; why did it not?

Ans. It was too late; if the ship had seen the Mary Francis in time to have gone off, it would have done good and cleared her.

30. Is [it] not your opinion, that the Washington could be seen further from the Mary Francis than the Mary Francis from the Washington, founded on the fact that she was so seen; if not, on what fact is it founded?

Ans. From the fact that we were to windward.

31. Please state, when you first saw the Mary Francis coming into the wind, how long before the collision?

Ans. I can't say; she was full—rapping full—when I saw her first.

32. How much higher did the Washington ride in the water than the Mary Francis?

Ans. I couldn't say how much.

33. Could you see that the Mary Francis's sails were rapping full when you first saw her?

Ans. Yes, sir.

34. Could you see what sails the Mary Francis had set when you first saw her?

Ans. No, sir.

35. How much did the Mary Francis alter her course, after you saw her, before the collision?

Ans. I couldn't say how many points; she luffed right up.

36. Have you conversed with any one upon your testimony in this case, and with whom and when? State all that was said as particularly as you can.

Ans. No, sir.

37. Have you been blamed by the master of the Washington for not having kept a good look-out on that night?

Ans. No, sir.

38. How long had your watch been on deck when the collision occurred?

Ans. About three hours and a half.

Additional interrogatories by Mr. Sohier.

1. Is or not one reason for your expressing the opinion that the Washington could be seen from the Mary Francis further than from the Washington, founded on the fact you have mentioned that you were on the look-out, and upon the supposition that you could have seen the Mary Francis at a greater distance had the weather permitted?

Ans. Yes, sir, that is the reason.

2. Do you or not when, in your answer to the thirty-third cross interrogatory, you say that the sails of the Mary Francis were "rapping full," mean to be understood to refer to the time when you were first able to make out the Mary Francis distinctly enough to make out her position and to enable you to decide what course to take?

Ans. It was so when I first saw her.

JOHN SIMMONS.

U. S. A., *district of Massachusetts.*

This 22d February, 1848, personally appeared before me the above named deponent, who after being sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which his deposition was taken, was examined by the parties hereinafter named

on written interrogatories, which, with his answers thereto written down by me in his presence, after being carefully read over to him by me, were by him subscribed, in my presence, as and for his deposition. Taken at the request of J. P. Wheeler, the libellant, to be used in a libel pending between him and the ship Washington before the district court of the United States, holden at Boston, in and for said district, and said adverse party attended, and said deponent being bound on a voyage to sea is the cause of taking this deposition.

EDW'D G. LORING,
Commissioner.

This cause was entered at the October term of this court, A. D. 1850, and thence was continued until this present term. And now, on the tenth day of July, A. D. 1851, after a full hearing of the cause upon the facts proved and the arguments of counsel, and mature deliberation thereon had, the court doth order, adjudge, and decree, that the said libellants recover of the said respondents the sum of fifteen thousand four hundred and seventy-three dollars damages, and costs of suit taxed at .

From which decree the said respondents claim an appeal to the Supreme Court of the United States, as follows:

Circuit court of the U. S., for the first circuit and district of Massachusetts.

JOSEPH P. WHEELER & al., libellants,
vs.
THE SHIP WASHINGTON, her tackle, &c.,
C. McFARLAND & al., respondents.

The respondents in this cause conceiving themselves aggrieved by the final sentence or decree, entered on the tenth day of July current, in the above entitled cause, do hereby appeal therefrom to the Supreme Court of the United States, and they pray that this their appeal may be allowed; and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the Supreme Court aforesaid.

C. McFARLAND & AL.,
By CHAS. HOMER,
Their attorney.

SOHIER & LOWELL, *respondents' proctors.*

BOSTON, July 18, 1851.

Whereupon said appeal is allowed by the court.

UNITED STATES OF AMERICA.

Circuit court of the United States, Massachusetts district.

I, Isaac O. Barnes, clerk of the circuit court of the United States, for the first circuit and district of Massachusetts, do hereby certify the

foregoing to be a true copy of the record of the case Joseph P. Wheeler et al., in admiralty, versus the ship Washington & al.

In testimony whereof I have hereunto set my hand, and affixed the seal of said circuit court, this twenty-sixth day of November, [SEAL.] in the year of our Lord one thousand eight hundred and fifty-one, and in the seventy-sixth year of the independence of the United States of America.

ISAAC O. BARNES, *Clerk*.

[REC. CCII, D. T., 1851.]—10